

THE RESULT OF GENERALIZATION: BEARING THE CONSEQUENCES OF IMPRECISELY DESIGNATING TERRORIST ORGANIZATIONS

A Monograph

by

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ABSTRACT

THE RESULT OF GENERALIZATION: BEARING THE CONSEQUENCES OF IMPRECISELY DESIGNATING TERRORIST ORGANIZATIONS, by MAJ Christopher M. Hodl, 72 pages.

What is the effect of the United States ineffectively designating terrorist organizations on military and diplomatic operations? Establishing a practicable definition of terrorism is a pursuit that invariably leads to vagueness to compensate for context and allow for discretion in application. The resulting effect on criteria for designating terrorist organizations creates a framework that may encompass almost any act of violence if applied incorrectly. As such, this monograph attempts to identify the issues with the definition and framework that prevent effective application of terrorist organization designations and provide options for improvement. This is accomplished through identification of the statutory terrorism definition's characteristics, an introduction of the terrorism designation framework and case studies of two organizations listed and subsequently delisted as terrorist organizations.

Content of the research also includes academic discussion of the characteristics of a definition of terrorism and the current statutory framework to identify strengths and weaknesses. Findings from this research and analysis of information indicated that the statutory definition and designation framework allow excessive discretion in designating terrorist organizations, leading to negative effects on diplomatic and military operations. As currently employed, there is little restriction in the designation of foreign violent groups oppose their government as terrorist organizations. Consequently, there is wide discretion in designating groups as terrorist without understanding their purpose, complicating operations and delegitimizing the designation process.

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TABLE OF CONTENTS

ILLUSTRATIONS	vii
TABLES	viii
INTRODUCTION	1
LITERATURE REVIEW	6
Continuous Difficulty in Defining Terrorism	6
Academic Definition in Two Parts.....	8
Defining Noncombatants and the Purpose of the Act.....	8
Required Characteristics of the Definition.....	10
Conclusions About Definitional Elements.....	12
Government Definitions of Terrorism	13
U.S. Government Terrorism Framework	16
Literature Review Summary	22
ISSUES IN THE STATUTORY DEFINITION OF TERRORISM	24
Statutory Definition Issues.....	24
Alternative to the Statutory Definition.....	28
Combining Cabinet Definitions	29
Mentally Modeling a New Definition.....	30
FUNCTIONAL ERRORS IN THE FRAMEWORK.....	33
Faults of Using Separate Definitions and Elements.....	35
Consequences of Excess Discretion in Designation	38
Narrowing a Discretionary Designation Process	40
CASE STUDIES	42
The Mujahedin-e Khalq and the United States	42
The Communist Party of Nepal (Maoist) and the United States.....	49
PATH TO A DEFINITION	56
APPENDIX A: LIST OF FTOs and SDGTs	60
BIBLIOGRAPHY	68

ACRONYMS

CPN(M)	Communist Party of Nepal (Maoist)
DoD	Department of Defense
DoS	Department of State
E.O.	Executive Order
FRAA	Foreign Relations Authorization Act
FTO	Foreign Terrorist Organization
MeK	Mujahedin-e Khalq
OFAC	Office of Foreign Asset Control
PMOI	People's Mujahedin Organization of Iran
SDGT	Specially Designated Global Terrorist
SDN	Specially Designated National
SDT	Specially Designated Terrorists
TEL	Terrorist Exclusion List
U.S.C.	United States Code

ILLUSTRATIONS

	Page
Figure 1. Model of Guerilla Tactics vs. Terrorism	30

TABLES

	Page
Table 1. List of FTOs, SDGTs, and SDTs	60

INTRODUCTION

Any definition of political terrorism venturing beyond noting the systematic use of murder, injury, and destruction or the threats of such acts toward achieving political ends is bound to lead to endless controversies.

—Walter Laqueur, *Terrorism*

Words differently arranged have a different meaning, and meanings differently arranged have different effects.

—Blaise Pascal, *Pensées*

Since 2001, defining terrorism has been a wide, growing field in attempts to establish a theoretical model of “what terrorism is.”¹ Academics compare attempts to develop this model to *chasing a chimera* or entering a *Bermuda Triangle* of definitions.² The lack of consensus on a definition is a major hindrance to its study and theory development.³ Most definitions of terrorism focus on the actions of individuals or groups, and attempt to prohibit specific behaviors. The focus on behavior as a basis to define terrorism causes the labeling and targeting of groups without understanding the purpose of the behaviors.

This monograph does not focus on defining terrorism overall as there are already numerous books on the subject, which often seem to fall short of that goal. In response to Alex Schmid’s survey on terrorism definitions, Jeffrey Simon posed two questions on definitions of terrorism: What is terrorism, and who is a terrorist?⁴ He notes that bureaucratic perspective and responsibility are key in the development of definitions, and are the reason many governments have internal definitions of terrorism.⁵

¹Dipak K. Gupta, *Understanding Terrorism and Political Violence: The Life Cycle of Birth, Growth, Transformation, and Demise* (London: Routledge, 2008), 2. Gupta notes that the number of books with the word “terrorism” in the title published between 2000 and 2007 was more than ten times the total number in the previous six decades. The total number as of 2007 was almost 11,000, and it stands to reason that the rate of expansion has not slowed in the seven years since.

²Alex Schmid, ed., *The Routledge Handbook of Terrorism Research (Routledge Handbooks)*, Reprint ed. (New York, NY: Routledge, 2013), 42.

³*Ibid.*, 43.

⁴*Ibid.*, 44.

⁵Schmid, 44.

The responsibility of the Department of State (DoS) is to use a statutory definition of terrorism to designate international “terrorist organizations” across a designation framework. This framework uses the perspective of a listed group’s threat to U.S. citizens or its national security, consisting of national defense, foreign relations, or economic interests.⁶ The difficulty in researching the U.S. Government’s reasoning for listing particular international terrorists is that the designation process is not required to answer “why” groups are designated, only that they are designated.

Depending on the source, there are up to 4,000 documented violent groups that espouse or use terrorism as a tactic.⁷ The United States cannot and should not list all of these groups as international terrorist organizations due to their sheer numbers, which would make designation meaningless if it is all-inclusive. There are 57 groups currently named to the Foreign Terrorist Organization (FTO) list since its inception in 1997, with only nine groups delisted in the same period.⁸ A list of all groups designated as FTOs as of 17 March 2014 is in Appendix A as Table 1. A review in Chapter 6 of the *2012 Country Reports on Terrorism* reveals that some, but not all, of the listed groups have posed a direct threat to U.S. national security. Some designated groups, such as Al-Qaida and its affiliates, pose an obvious threat to U.S. national security.⁹ Other groups, such as the Continuity Irish Republican Army and Jundallah, which are violent groups that espouse terrorist tactics, do not seem to directly connect to U.S. national interests.¹⁰ Utilizing the Specially Designated National (SDN) search function on the Treasury Department’s Office of Foreign Asset Control (OFAC) website, 245 “entities” are designated as Specially Designated Global Terrorists (SDGT) or Specially Designated Terrorists (SDT).¹¹ Many of the listed

⁶U.S. Department of State, “Foreign Terrorist Organizations,” <http://www.state.gov/j/ct/rls/other/des/123085.htm> (accessed 14 March 2014).

⁷Schmid, 343–348.

⁸Department of State, “Foreign Terrorist Organizations.”

⁹U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2012* (Washington, DC: 2013), 278–283.

¹⁰*Ibid.*, 267, 253–254.

¹¹Office of Foreign Asset Control, “SDN Search,” <http://sdnsearch.ofac.treas.gov/default.aspx> (accessed 17

entities are under several sanction programs in addition to SDGT, and many are business organizations apparently linked to terrorism. Results from this search are in Appendix A as Table 1. The lack of apparent consistency in designating terrorist organizations opens the United States to charges of hypocrisy in applying the designation, and lessens the meaning of the designation.¹² These hypocrisy charges are both domestic and international, focusing on the lack of transparency in the process and the interests of the parties involved. The case study of the Mujahedin-e Khalq is a good example of this, where Iran decried the MeK's delisting, while public figures like GEN(R) Hugh Shelton question the reason for listing the MeK in the first place.¹³

Determining who is a threat to a government and its citizens is a difficult proposition. This is especially true in the realm of terrorism, in which actions are the primary measurement used to determine classification. Attempting to define a group by its behaviors or actions they adopt to fight against a government can lead to a limited understanding, as their method does not indicate their specific purpose. Classification of a group as "terrorist" does not consider its strategy, doctrine, or mission, which is essential for understanding who they actually are. This leads the government to a focus on tactics that lacks understanding of how a group sees itself in relation to its adversaries and its allies, and the purpose of the group's actions.

While officially labeling groups enables operations to counter them, the efficacy of the designation is important to ensure counterterrorism efforts target the group in an effective manner. Applying the efficacy to the definition is important to the designation of terrorist organizations because it

March 2014).

¹²Hugh Shelton, "Ending Hypocrisy of Terrorist Designation," *The Washington Times*, 13 October 2011, <http://www.washingtontimes.com/news/2011/oct/13/ending-hypocrisy-of-terrorist-designation/> (accessed 13 March 2014).

¹³Yeganeh Torbati, "Iran Condemns U.S. Removal of MEK from Terrorist List," *Reuters*, 26 September 2012, <http://www.reuters.com/article/2012/09/26/us-iran-usa-idUSBRE88P0B420120926> (accessed 31 March 2014); Shelton, "Ending Hypocrisy."

ensures achieving the desired effects.¹⁴ Applying effectiveness to the utilization of organization designation allows the label to achieve the intended effects.¹⁵ The lack of clarity and utility in the current definition and discretion in applying sanctions against these groups can create confusion and lack of consensus in using the terrorist label. The lack of a consensus in designating terrorist organizations lessens the credibility and meaning of the designation, opening the United States to hypocrisy. This leads to the research question: Is the current U.S. designation framework effective in identifying terrorist groups while mitigating negative effects on military and diplomatic operations?

Examination of the U.S. sanctions framework will demonstrate how excessive discretion in designating groups as “terrorist organizations,” while allowing political flexibility, becomes a diplomatic negotiating tool, reducing the legitimacy of the designation. This subjective framework use is enabled by a vague statutory definition of terrorism that is focused on terrorism as a behavior, not countering the purpose of terrorist groups. The United States previously designated groups as terrorist organizations, using broad discretion and vague definition, and causing diplomatic embarrassment and confusion in military operations. This will prove the thesis that the United States is inconsistent in designating terrorist organizations because of wide discretion in applying designation labels, using a vague definition of terrorism that focuses group behavior, not their stated purpose. Failing to achieve an accurate classification and targeting of threat group or engaging friendly groups leads to wasted diplomatic and military efforts at strategic and operational levels.

This monograph will use three forms of references. Primary sources will utilize United States Code (U.S.C.), United States District Court cases, official government publications, and “frequently asked questions” produced by the DoS and other government agencies. They will provide current definitions

¹⁴Webster’s dictionary defines efficacy as “the power to produce a desired result or effect.” *Merriam-Webster Dictionary*, s.v. “efficacy,” <http://www.merriam-webster.com/dictionary/efficacy> (accessed 13 March 2014).

¹⁵Webster’s dictionary defines effective as “producing a result that is wanted; having an intended effect.” *Merriam-Webster Dictionary*, s.v. “effective,” <http://www.merriam-webster.com/dictionary/effective> (accessed 13 March 2014).

and designation framework information for analysis. Government documents are from official sources to ensure validity, accuracy, and authenticity. Secondary sources include scholarly books, journals, and professional research writings and provide academic analysis, input, and reinforcement to argument. Verification of information uses similar references for validation.

The literature review addresses the challenge academics have encountered in defining terrorism and the current government definitions applicable to the discussion. The review also outlines the current U.S. framework for designating terrorist groups and highlights its limited academic discussion. Section One examines the United States' vague wording in its definition of terrorism in relation to academic models, and proposes changes that increase clarity in the designation. Section Two will assess the impact of a vague definition on the overlapping structure of the sanctions framework, which allows excessive discretion in designating terrorist organizations. The effects of discretionary designation is demonstrated in Section Three, which will use case studies of U.S. Government interaction with the Communist Part of Nepal (Maoist) (CPN(M)) and the Mujahedin-e Khalq (MeK) to demonstrate the consequences of political influence. Finally, the conclusion summarizes the findings and proposes changes to reduce inconsistency.

LITERATURE REVIEW

Developing an understanding of an effective definition of terrorism is a long and frustrating process because most literature focuses on the concept of terrorist acts and their sources, without thoroughly defining it first. This distinction is important because governments must establish a sound definition of terrorism in order to begin dealing with its sources. The expanse of material on terrorism is indicated by the increase of the number of books with “terrorism” in their title published between 2000 and 2007, which rose more than ten times the total number of books in the previous six decades. There is an overwhelming amount of research on trying to frame and identify the concept of terrorism, but significant gaps remain in the development of a theoretical model for the definition of terrorism.¹⁶

Continuous Difficulty in Defining Terrorism

Defining terrorism has not been simple; it has gained little consensus due to the wide variation of viewpoints on the subject. Authors from a number of academic disciplines have produced studies and surveys, indicating the countless debates and frustration of the pursuit. Alex Schmid conducted a landmark academic survey, and identified more than 250 academic, governmental, and intergovernmental definitions, signifying the proliferation of definitions throughout history without a consensus on the action.¹⁷

Several academic publications and theories reference academic discussions of the definition of terrorism. Their in-depth experience, publications, and analysis of U.S. terrorist designation frameworks contributed greatly to the research of this monograph. These academic works provide the backbone of the literature review and analysis of the U.S. terrorism designation framework.

Dr. Alex Schmid is the Director of the Terrorism Research Initiative, a network of scholars who conduct collaborative research. He has authored and edited more than 150 reports and publications, and is

¹⁶Gupta, 2.

¹⁷Schmid, 44.

responsible for several landmark surveys that collected input from across academia to establish elements of an academic consensus definition of terrorism.¹⁸ Dr. Boaz Ganor is the Ronald Lauder Chair for Counter-Terrorism and Deputy Dean at the Lauder School of Government at the Interdisciplinary Center (IDC) in Herzliya, Israel. He has published and edited numerous articles and books on terrorism and counter-terrorism, with his most well known book *The Counter-Terrorism Puzzle—A Guide for Decision Makers* used as a textbook in universities worldwide.¹⁹ Dr. Bruce Hoffman is currently the Director of the Center for Security Studies at Georgetown University's Edmund A. Walsh School of Foreign Service in Washington D.C. He published his highly acclaimed book, *Inside Terrorism*, in 2006 and the Washington Post has described it as the “best one volume introduction to the phenomenon”.²⁰ Dr. Dipak K. Gupta is a Distinguished Professor in Political Science at San Diego State University and was the Fred J. Hansen Professor of Peace Studies from 1998-2001 and 2004-2011. He has authored nine books and published over 100 articles in scholar journals and research monographs.²¹ Dr. Paul Pillar is core research member of the Security Studies Program at Georgetown University in Washington, D.C. His book *Terrorism and U.S. Foreign Policy* is a Washington Post bestseller.²²

The primary factor identified in the relevant literature is the lack of consensus in constructing a contextual definition of terrorism. The requirement for context can be broken down further into two factors: The context of the act from the victim's point of view, and the purpose of the act considering the intent of the actor. Several definitions of terrorism contain similar concepts that address both context and purpose. Discussion of the differences between the statutory definitions used by the DoS and Department

¹⁸Schmid, xii.

¹⁹International Institute of Counter-Terrorism, “Dr. Boaz Ganor,” <http://www.ict.org.il/Biographies/DrBoazGanor/tabid/152/Default.aspx> (accessed 19 March 2014).

²⁰Georgetown University Center for Peace and Security Studies, “Bruce Hoffman,” Georgetown University, <http://explore.georgetown.edu/people/brh6/> (accessed 19 March 2014).

²¹San Diego State University Department of Political Science, “Dr. Dipak Gupta, Political Science,” San Diego State University, <http://www-rohan.sdsu.edu/~dgupta> (accessed 19 March 2014).

²²Georgetown University Center for Security Studies, “Paul R Pillar,” Georgetown University, <http://explore.georgetown.edu/people/prp8/> (accessed 19 March 2014).

of Defense (DoD) provide examples of how cabinet-level Departments address these two factors. The literature review will add context to the monograph by outlining the statutory framework for labeling groups as terrorist and the resulting effect of such a designation. These topics will provide an overview on creating a common definition of terrorism, the construction of the United States definition, and the impact of being designated as a terrorist group. These are three critical considerations when determining the effectiveness of the United States definition of terrorism.

Academic Definition in Two Parts

Schmid recognizes that, as a manmade construct, there is no intrinsic definition of terrorism, and relies on the point of view of the target and the actor.²³ Hoffman and Schmid recognize that groups who conduct terrorism rarely see themselves as “terrorists,” instead preferring names involving freedom, liberation, and self-defense.²⁴ Groups labeled “terrorists” see themselves as “reluctant warriors,” who lack alternatives to violence to counter a repressive government, rival ethnic groups, or an unresponsive international political framework. Such groups resort to violence against civilians, only because they lack the strength in arms to confront military forces directly.²⁵ Academic discussion points to two debated features of what “terrorism” is: defining “who” is a target of terrorism, and establishing the purpose of the act. Academics attempt to address these issues by establishing models of observable characteristics of terrorism definitions.

Defining Noncombatants and the Purpose of the Act

Discussion about who is a target of terrorism focuses on developing the concept of non-combatants. The debate centers on whether only civilians can be non-combatants, or if this can also include military personnel in a peacetime status. Hoffman, Schmid, and Pillar provide examples, such as

²³Schmid, 40.

²⁴Bruce Hoffman, *Inside Terrorism*, rev ed. (New York, NY: Columbia University Press, 2006), 21; Alex Schmid, 40.

²⁵Hoffman, 22–23.

the bombing at Khobar Towers or the attack against the USS Cole, to debate the required context whether military personnel can possess non-combatant status or, if by the nature of their profession, are always considered combatants.²⁶ This contrasts to the concept that only civilians can be non-combatants and targets of terrorism. Ganor argues that military personnel are always legitimate targets of terrorists because of their profession, regardless of whether their duty status involves being armed or in a combat zone.²⁷ Context is a required factor when developing a noncombatant definition because the perpetrator and target both possess extremely different viewpoints of a terrorist act. In the case of the opposing viewpoints above, if military forces are always seen as combatants, then it could be argued that a nation that raises a military force is always in combat. This contrasts to military forces only being combatants in an identified combat zone, which creates an excessively wide definition of noncombatants.

The purpose of terrorism invites discussion when developing a definition. A common aspect of Ganor, Schmid, and Hoffman's discussion of definitions is the use of force or violence, but the literature does not develop consensus on the purpose of the violence.²⁸ Although terrorist acts are generally a form of crime, they possess a psychological aspect of spreading fear through a criminal activity. Hoffman and Ganor separate crime from terrorism as an important distinction, because criminal violence lacks the enduring psychological effect that is inherent in terrorism.²⁹ Ganor states that non-violent activities such as protests and demonstrations are not terrorism, because they lack the use of force.³⁰ Ganor and Hoffman suggest the primary motivation for violence should be limited to political influence, as alternate reasons

²⁶Hoffman 32; Schmid, 46–47; Paul R. Pillar, *Terrorism and U.S. Foreign Policy*, pbk. ed. (Washington, DC: Brookings Institution Press, 2003), 14. Terrorists attacked Khobar Towers in 1996 with a suicide truck bomb; terrorists attacked the USS Cole with a small boat loaded with explosives while in harbor at Aden, Yemen in 2000. Both incidents were during "peacetime."

²⁷Boaz Ganor, *The Counter-Terrorism Puzzle: A Guide for Decision Makers* (New Brunswick, NJ: Transaction Publishers, 2005), 23.

²⁸Boaz Ganor, "Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?" *Police Practice and Research* 3, no. 4, (2002): 294; Alex Schmid, 39; Hoffman, 36.

²⁹Hoffman, 36; Ganor, "Defining Terrorism," 294.

³⁰Ganor, "Defining Terrorism," 294.

can confuse analysis of the act.³¹ Schmid, Hoffman, and Ganor claim that specific motivations, such as religious or ecological terrorism, are irrelevant because resorting to common terrorist practices to coerce or influence still fall under creating or maintaining political change.³² The literature describes the purpose of the terrorist act as using violence to coerce a population or influencing the political process through fear, but does not come to a consensus on the details of each characteristic.

Required Characteristics of the Definition

Several theorists have identified the concepts or principles of the United States' statutory definition of terrorism. As Boaz Ganor questions the cliché, "one man's terrorist is another man's freedom fighter," he identifies three critical characteristics that define terrorism: a violent act, a political purpose, and the targeting of noncombatants.³³ He labels the violent act as the essence of the action, because nonviolent acts cannot be terrorism, assumedly because it does not involve fear.³⁴ He states the goal of the terrorist act is to achieve a political effect, whether overthrow of the government or revising a political, social, or religious norm. He labels terrorism without a political purpose is, at most, a criminal act.³⁵ Ganor finally asserts that the target of the damage must be civilian, as this distinguishes it from guerrilla warfare directed against a government.³⁶

Although Ganor does not include the requirement for identification of the actor in his definitional characteristics, he acknowledges that nations who attack civilians are not committing terrorism. Such nations are committing crimes against humanity during peacetime, or violating the law of war during

³¹Ganor, "Defining Terrorism," 294; Hoffman, 37.

³²Schmid, 66 and 178; Hoffman, 88; Ganor, *The Counter-Terrorism Puzzle*, 17.

³³Ganor, *The Counter-Terrorism Puzzle*, 17.

³⁴*Ibid.*

³⁵*Ibid.*

³⁶*Ibid.*

combat, thus separating nations from non-state actors.³⁷ Ganor also says the most important distinction between terrorists and freedom fighters is their selection of targets. He asserts that when a group uses violence to achieve a political purpose and specifically targets civilians, they are terrorists, regardless of their previous targets.³⁸ This critical element reveals the characterization of the group based on their act, which relies on leveraging the fear of the populace through specific targeting, not collateral or incidental injury.

Ganor's characteristics are similar to the scholarly analysis by Dipak Gupta, who identified four factors contained in the DoS definition: the violence of the act, a non-state actor, a non-combatant target, and political motivation.³⁹ Gupta adds that the focus of the definition is not on the "lone wolf" terrorists, giving the example of Ted Kaczynski, because he is primarily interested in the life-cycle of terrorist organizations, as is this monograph.⁴⁰ Gupta agrees with Ganor in that violence is required for terrorism, as nonviolent acts or a lack of threat of violence do not qualify.⁴¹ The second criteria he identifies is that only non-state actors conduct terrorism, which excludes the actions of both dictators and military forces, essentially excluding the largest source of civilian death – government.⁴² Gupta's third criteria, relating to the DoS definition, focuses on the selection of targets, and specifically questions whether "non-combatant" includes military personnel not in a wartime status, such as attacks on the USS Cole, or Flight #77, which crashed into the Pentagon on 11 September 2001.⁴³ He identifies this as the most arbitrary criteria, because labeling one attack as terrorism and another as guerrilla action may serve political

³⁷Ganor, *The Counter-Terrorism Puzzle*, 18–19.

³⁸Ganor, "Defining Terrorism," 288.

³⁹Gupta, 8.

⁴⁰*Ibid.*, 9.

⁴¹*Ibid.*, 8.

⁴²*Ibid.*, 9.

⁴³*Ibid.*

purposes, but do not add to the political discourse.⁴⁴ He calls the requirement for political aim the most important criteria, since it distinguishes between terrorists using violence for a “higher good” and a criminal gang’s motivation that rests with the group.⁴⁵

Pillar also identifies four elements in the DoS definition: premeditation, political motivation, noncombatant targets, and subnational agents.⁴⁶ Although his elements are similar, Pillar differs from Gupta in the analysis of the concepts. His biggest difference is the focus on premeditation, where a terrorist act must have intent and a prior decision for commission, which excludes impulse and accidents.⁴⁷ His second element, political motivation, is similar to Ganor and Gupta in requiring a focus on “macro concerns” about changing a larger order, which excludes the monetary motivation of criminal violence.⁴⁸ Pillar classifies noncombatants as including military personnel in a noncombat or unarmed status, such as the example of the attack on Khobar Towers or the U.S. Marine barracks in Beirut.⁴⁹ Pillar distinguishes the acts of war by nations from subnational groups in his final element, and acknowledges that “lone wolf” terrorists groups can exist, in that they can cause terror by meeting all of the previous elements.⁵⁰ At the end of his discussion about the definition, he adds that the threat of terrorist attack is terrorism as well, addressing the fear component indirectly.⁵¹

Conclusions About Definitional Elements

In order to classify an act as terrorism, the consensus between these three academics analyses is that a violent act must occur with a political and psychological purpose against noncombatants. Terrorists

⁴⁴Gupta, 9.

⁴⁵Ibid., 10.

⁴⁶Pillar, 13.

⁴⁷Ibid.

⁴⁸Ibid., 14.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

utilize violence as a means to reach their end state of political influence through fear or coercion. Without violence, there is no fear or coercion induced, and thus no terrorism. If a group is using violence, but is not attempting to achieve a political purpose, they are simply committing a criminal act. There is agreement between models on the requirement for noncombatants, but there is dissent on who is a noncombatant and under what circumstances.

Government Definitions of Terrorism

In his study, Schmid identified more than 20 domestic and international terrorism definitions by the United States Government alone.⁵² These definitions were primarily at the cabinet and agency level, and focus on the internal mission of the organization. This is apparent from the word choice within each definition, which clearly orients on the organization's mission. With the exception of the DoS, which uses a statutory definition, the Departments of Defense, Treasury, Homeland Security, and Justice all have distinctly different non-statutory definitions. This literature review will examine only the DoS and DoD definitions to highlight the differences for further discussion. Each respective department's definition reflects their understandings of what terrorism is, and how they attempt to counter it.

Examination of the United States' terrorism definition must start with examination of the legal code, which contains the statutory definition used by the DoS to designate terrorist organizations. The statutory definition is contained in 22 U.S.C. § 2656f(d), and was conceived in its current form in the Foreign Relations Authorization Act (FRAA) of Fiscal Year 1988-1989.⁵³ This definition is found throughout official United States documents when designating who constitutes a "terrorist." The DoS is the primary agency involved in the designation of terrorist organizations, and utilizes the statutory

⁵²Schmid, 44.

⁵³Office of the Coordinator for Counterterrorism, "Fact Sheet, Foreign Relations Authorization Act, Fiscal Years 1988 and 1989: Terrorism Definition," 8 April 2008, <http://2001-2009.state.gov/s/ct/rls/fs/08/103401.htm> (accessed 12 December 2013).

definition of terrorism, which is, “premeditated, political motivated violence perpetuated against noncombatant targets by subnational groups or clandestine agents.”⁵⁴

Schmid asserts in his survey that the statutory definition has changed no less than eight times between 1982 and 2006, with the final change removing the purpose statement on the end of the definition, “usually intended to influence an audience.”⁵⁵ This is not correct, as the definition did not exist until Congress enacted the FRAA of 1988-1989, making it very difficult for Schmid to demonstrate its change prior to its inception. The “removed” part of the definition Schmid cites, originally existed in the 1995 *Patterns of Global Terrorism*, where the definition in the introduction by the DoS insinuated that “usually intended to influence an audience” was part of 22 U.S.C. § 2656f(d).⁵⁶ The DoS did not correct the error in its representation of the statutory definition until 2004 when the title of the document changed to *Country Reports on Terrorism*.⁵⁷ This effect of this misleading statement is found throughout the academic discussion on terrorism because several authors refer to the inaccurate version of the definition. This gives the impression that Congress removed the purpose of the statutory definition of terrorism, when it never officially existed.⁵⁸

Pillar, Schmid, Hoffman, Ganor, and Gupta consider the statutory definition as a starting point to debate the composition requirements of terrorism definitions, although not all agree on the elements it contains.⁵⁹ Pillar identifies four elements contained in the United States’ statutory definition:

⁵⁴Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Public Law 100-204, § 140, *U.S. Statutes at Large* 101 (1987): 1347–49, codified at *U.S. Code* 22 (2012), § 2656f(d)(2).

⁵⁵Schmid, 44.

⁵⁶Office of the Coordinator for Counterterrorism, “Introduction Global Patterns of Terrorism 1996,” <http://www.state.gov/www/global/terrorism/1996Report/1996index.html> (accessed 15 March 2014).

⁵⁷Office of the Coordinator for Counterterrorism, “Chapter 1 Legislative Requirements and Key Terms, Country Reports on Terrorism 2004,” <http://www.state.gov/j/ct/rls/crt/45323.htm> (accessed 15 March 2014).

⁵⁸Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, § 7102, *U.S. Statutes at Large* 118 (2004): 3777–78, codified at *U.S. Code* 22 (2012), § 2656f. The only change found by the author during research of the statutory definition in United States Code was that in 2004, the “and” was removed from 22 U.S.C § 2656f(d)(2).

⁵⁹Pillar, 13; Schmid, 44; Hoffman, 32; Ganor, *The Counter-Terrorism Puzzle*, 23; Gupta, 8.

premeditation, political motivation, targeting of noncombatants and perpetrators as either subnational groups or clandestine agents.⁶⁰ Gupta's analysis of the statutory definition differs in that he focuses on the violence aspect of the DoS definition, not the premeditation of the act.⁶¹ The key term "noncombatant" in the DoS definition is not defined in 22 U.S.C. § 2656f(d), but is interpreted in the *Country Reports on Terrorism 2012* as including civilians as well as military personnel, armed or not, who are not in a war zone or warlike setting. The only exclusion made is armed military personnel in a combat zone, such as Afghanistan in 2012.⁶²

Cabinet-level departments and their subordinate agencies commonly have separate definitions that are reflective of their role in countering terrorism and capability to do so. The definition of terrorism utilized by the DoD in Joint Publication 1-02 is, "The unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political."⁶³

Hoffman argues that this definition is more complete than the statutory definition, although it does not distinguish between targeting noncombatants and military forces.⁶⁴ This definition also contrasts with the DoS definition in that it does not recognize who the agents are that conduct terrorism. In contrast, the DoD definition identifies some root motivations for "the unlawful use of violence," and the psychological purpose of terrorism for coercive purposes. The definition also recognizes the social aspect of terrorism and that threats of violence may fulfill the psychological purpose of terrorism without actual violence.⁶⁵ Academics have not examined the DoD definition to the extent of the statutory definition, but

⁶⁰Pillar, 13–14.

⁶¹Gupta, 8.

⁶²Bureau of Counterterrorism, *Country Reports 2012*, 293.

⁶³U.S. Department of Defense, *Joint Operation Planning: Joint Publication 5-0* (Washington, DC, 2013), 266.

⁶⁴Hoffman, 33.

⁶⁵*Ibid.*

this definition is critical to how the United States utilizes military force to interact with designated terrorist groups.

There is no consensus among academics on the construction of a definition of terrorism due to the influence of context and purpose on definitional requirements. Several academics developed required attributes of a definition of terrorism, but the requirement of the defining agency to determine the quality of those attributes remains. Cabinet level definitions of terrorism are, by design, focused on the mission of the organization in order to guide mission accomplishment in their respective terrorism function. As will be examined in the framework, 18 U.S.C. §2339B prevents diplomatic and military representatives from interacting with groups and individuals on are on the SDN list.

U.S. Government Terrorism Framework

In conducting research for this monograph, few books give more than a passing mention to the United States' designation framework with only a couple of articles discussing it in detail. The United States maintains the SDN list as a consolidation of all groups or individuals that have financial or travel restrictions. This consolidated list provides a single resource for accessing currently sanctioned entities.⁶⁶ Within the SDN list, there are fourteen different designations of sanctions, four of which pertain directly to terrorism. Designation as a SDT or SDGT allows for the blocking of financial transactions through U.S. financial institutions or by U.S. nationals.⁶⁷ The SDT and SDGT lists are strictly financial sanctions maintained by the Treasury Department. Both of these classifications, in addition to the FTO list and other narcotic and criminal-based lists, are contained under the SDN list, which is the master list of sanctions against foreign groups and individuals.⁶⁸ The DoS may designate groups on multiple lists concurrently, depending on the purpose of the sanctions and the ability to support the required. A

⁶⁶Audrey Kurth Cronin, "The 'FTO List'" and Congress: Sanctioning Designated Foreign Terrorist Organizations." No. RL32120. (Congressional Research Service Report for Congress, 2003), 5.

⁶⁷Ibid., 4.

⁶⁸Ibid., 5.

description of the FTO, SDT, SDGT, and TEL designations along with the prohibitions they place on U.S. citizens explains the United States' framework.

The FTO list is the most widely published of the terrorism-related SDN lists due to the very public announcement of groups placed on the list.⁶⁹ The Antiterrorism and Effective Death Penalty Act established the category in 1996, which amended 8 U.S.C. to allow the Secretary of State to designate FTOs.⁷⁰ An organization is listed as a FTO when it is designated by the Secretary of State under 8 U.S.C. § 1189(a)(1) if the organization,

(1) is a foreign organization;

(2) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism); and

(3) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.⁷¹

“National security” of the United States is defined under 8 U.S.C. § 1189(d) as “national defense, foreign relations or economic interests.”⁷² A FTO designation is the most punitive category on the Specially Designation National list, and must meet the strictest review standards of any “terrorism” designation. Once a FTO is designated as such, they may not receive any support, resources, or training from U.S. nationals or persons subject to the prohibition; may not be admitted to the United States and may be deported; and must have all financial transactions blocked by U.S. based financial institutions.⁷³ The groups may challenge their designation as a FTO in court every two years.⁷⁴ Designation is in

⁶⁹Cronin, “The ‘FTO List,’” 2.

⁷⁰Ibid.

⁷¹Department of State, “Foreign Terrorist Organizations.”

⁷²Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, § 302, *U.S. Statutes at Large* 110 (1996): 1248–50, codified at *U.S. Code* 8 (2012), § 1189(d).

⁷³Department of State, “Foreign Terrorist Organizations.”

⁷⁴Ibid.

cooperation with the Department of Justice and the Treasury Department to establish proof of terrorism activity and coordinate sanctions.

President Clinton established the SDT list in 1995 under the International Emergency Economic Powers Act (IEEPA) as Executive Order (E.O.) 12947, aimed specifically at financially blocking groups and individuals that were threatening to disrupt the Middle East Peace Process.⁷⁵ The justification for this list was that the Middle East Peace Process was central to U.S. National Security; it blocked all U.S. assets, and prohibited all U.S. citizens from engaging in transactions with the listed parties.⁷⁶ Addition to the list is not challengeable in court or appealable by the designated group and removal from the list is only upon decision by the Secretary of State or termination of the Executive Order.⁷⁷ The SDT list was incorporated into the SDGT list after the 11 September 2001 attacks, to include the increased sanctions on supporting entities.⁷⁸

President Bush established the SDGT list in 2001 as a response to the 9-11 attacks under the IEEPA.⁷⁹ This list, written as E.O. 13224, blocks all properties and interests of listed groups, individuals, and supporting entities involved in 11 September 2001, or as designated by the Secretary of State. The SDGT list increases the application of sanctions to entities who support terrorism or terrorist activities, including nongovernmental organizations and individuals.⁸⁰ The following excerpt from E.O. 13224 explains whom the Secretary of State has the power to designate:

(a) Foreign persons listed in the Annex to this order;

⁷⁵Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty* (Cambridge; Cambridge University Press, 2008), 148.

⁷⁶*Ibid.*

⁷⁷Cronin, "The 'FTO List,'" 4.

⁷⁸Rensselaer Lee, "Terrorist Financing. The U.S. and International Response." No. RL31658. (Congressional Research Service Report for Congress, 2002), 15.

⁷⁹Donohue, 166.

⁸⁰*Ibid.*, 166–167.

(b) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order;

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order.⁸¹

The order specifically listed Al Qaeda and its associated groups, and Osama bin Laden and his supporters, as well as other persons who pose a risk to national security, foreign policy, the economy, or U.S. Citizens.⁸² The SDGT list also gives the Secretary of the Treasury power to block the assets of any person acting on behalf of, providing sponsorship or materials to, or is otherwise determined to be associated with those currently on the list.⁸³ This gives unprecedented power to freeze assets; and once assets of a designated group or individual are blocked, they become illegal to support financially or materially.⁸⁴

⁸¹George W. Bush, Executive Order 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," *Federal Register* 66, no. 186 (25 September 2001): 49079–49080.

⁸²Donohue, 166.

⁸³*Ibid.*

⁸⁴*Ibid.*

E.O. 13224 also gives the SDGT list its own definition of terrorism, which is separate and distinct from the statutory definition in 22 U.S.C. § 2656f. The definition of terrorism in E.O. 13224 is an activity, and includes the following:

- (i) Involves a violent act or an act dangerous to human life, property, or infrastructure; and
- (ii) Appears to be intended—
 - (A) To intimidate or coerce a civilian population;
 - (B) To influence the policy of a government by intimidation or coercion; or
 - (C) To affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage taking.⁸⁵

Having a separate definition of terrorism within E.O. 13224 allows the Secretaries of State and Treasury to designate without regard to the statutory definition. This distinction is very important to the discussion in Section Two of using separate definitions to designate terrorist groups as either an FTO or SDGT.

A group or individual placed on the Terrorist Exclusion List (TEL) may also be a SDT or SDGT under E.O.(s) 12947 and 13224, respectively. The TEL is solely for immigration purposes, and is pursuant to amendments made to 8 U.S.C. §1182 under the USA Patriot Act in 2001.⁸⁶ The DoS is responsible for the TEL with input from the Department of Justice.⁸⁷ The TEL does not utilize a definition of “terrorism” to list individuals, instead deporting only foreign individuals associated with groups that engage in “terrorist activity” as defined in 8 U.S.C. § 1182(3)(B).⁸⁸ The DoS website lists “terrorist activities” in 8 U.S.C. § 1182(3)(B) that consist of acts of high jacking, hostage taking, attacking diplomats, assassination, using weapons of mass destruction or threats, attempts or conspiracies to do so.⁸⁹ Only foreign nationals are on the TEL, resulting in their deportation or exclusion from entering the

⁸⁵Bush, 49080.

⁸⁶Cronin, “The ‘FTO List,’” 5.

⁸⁷Ibid., 5.

⁸⁸Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56, § 411, *U.S. Statutes at Large* 115 (1996): 345–48, codified at *U.S. Code* 8 (2012), § 1182(3)(B).

⁸⁹U.S. Department of State, “Terrorist Exclusion List,” <http://www.state.gov/j/ct/rls/other/des/123086.htm> (accessed 14 December 2013).

United States without the ability to challenge their status in court.⁹⁰ Cronin notes that the TEL is a broader standard than the FTO list, receiving less oversight while providing the same exclusionary effect.⁹¹

The laws governing penalties for terrorism are contained in 18 U.S.C. Chapter 113B, established by the Antiterrorism and Effective Death Penalty Act of 1996. Of specific interest to this discussion is 18 U.S.C. § 2339B, which prohibits the material support or resources to FTOs. This law forbids U.S. citizens from providing material support or resources to designated FTOs, or organizations that engage in terrorist activity or have previously engaged in terrorism.⁹² The key part of the unlawful conduct is the provision of material support or resources, which contains in its definition the prohibition of any “...training, expert advice or assistance...except medicine or religious materials.”⁹³ Training is defined as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” The final definition in the section explains the meaning of expert advice or assistance, meaning “advice or assistance derived from scientific, technical, or other specialized knowledge.”⁹⁴ Each of these prohibited activities restrict how U.S. citizens are allowed to interact with designated FTOs or SDGTs, which results in designations impacting the operational level of military and diplomatic actions.

The only relief for interacting with designated FTOs, SDTs, or SDGTs is applying for and receiving a waiver from the Office of Foreign Assets Control in the Department of Treasury.⁹⁵ The general or specific licenses are required for “any transaction that might otherwise be prohibited.”⁹⁶

⁹⁰Cronin, “The ‘FTO List,’” 5.

⁹¹Ibid.

⁹²Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, § 303a, *U.S. Statutes at Large* 110 (1996): 1250–53, codified at *U.S. Code* 18 (2012), § 2339B(a)(1).

⁹³Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, § 120005, *U.S. Statutes at Large* 108 (1994): 2022–22, codified at *U.S. Code* 18 (2012), § 2339A(b)(1).

⁹⁴Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, § 303a, *U.S. Statutes at Large* 110 (1996): 1250–53, codified at *U.S. Code* 18 (2012), § 2339B.

⁹⁵U.S. Department of Treasury, “Office of Foreign Assets Control Frequently Asked Questions,” <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#60> (accessed 18 December 2013).

⁹⁶U.S. Department of Treasury, “OFAC FAQ.”

General licenses allow an entire class of people to conduct a specific transaction, eliminating the need for a specific license for each transaction. Specific licenses authorize an individual or entity to conduct a specific transaction with a SDN as outlined within the license.⁹⁷ License requirements apply to all U.S. nationals, including diplomatic and military personnel on government-assigned duties. This requirement can place diplomats and military personnel in an awkward situation when a listed agent or group comes into power, and prevents representatives of the United States from providing any assistance. Members of non-governmental organizations are also subject to the prohibition if they are U.S. nationals, preventing their access to clients as in the case of *Holder v. Humanitarian Law Project* (2010), which prevented lawyers from communicating with their PKK and LTTE clients during a challenge against their FTO status.⁹⁸ This policy places groups attempting to challenge their designation in a situation where they are unable to coordinate their challenge with their lawyers, weakening their argument, and their ability to build a case.

The terrorism framework is comprised of several designations that range in severity of sanctions, and scrutiny of the facts of designation. This system of designations provides several options for naming terrorist organizations with limited ability to challenge designation. The Secretary of State determines how groups are designated, and uses three criteria to determine a group's status. Limits placed on interaction with terrorist groups, while meant to prevent funding and support from the United States, also prevent official United States representatives from interacting with these groups on a military or diplomatic basis.

Literature Review Summary

This literature review provided an overview on the difficulty in constructing a common definition of terrorism, the composition of the United States definition, and the process of designating as a terrorist

⁹⁷U.S. Department of Treasury, "OFAC FAQ."

⁹⁸*Holder v. Humanitarian Law Project*, 561 US 16, 17 (2010).

group. The primary factor of disagreement identified throughout is the contextual requirements in identifying what a terrorist act is, and consequently who is a terrorist. This contextual requirement discussed by the perception of the victim as well as the intent of the actor results in widely differing opinions with little consensus among academics and government. The statutory framework for labeling groups and individuals as “terrorist” is a result of decades of E.O.s, statutory amendment and reaction to events instead of a holistic review of definitional requirements. These topics are three critical considerations when determining the effectiveness of the United States framework for designating terrorist organizations with the current definition of terrorism.

ISSUES IN THE STATUTORY DEFINITION OF TERRORISM

As discussed in the review of the literature, definitions of terrorism are constructions that are behavior-focused. The United States' statutory definition of terrorism focuses on the ambiguous nature of noncombatants and the contextual requirement of the event, creating vagueness in the definition and enabling a liberal application to otherwise non-terrorist acts. A terrorism definition that is independent of perspective is more efficacious in designating FTOs, and the United States must adapt its definition to meet this requirement. Chapter 2 covers the impact of utilizing separate definitions for designating FTOs and SDGTs because the U.S. Government uses different methods to establish the definitions. This chapter will also address the shortcomings of the United States' terrorism definition, which contributes to the lack of effectiveness in designating terrorist organizations. An alternative definition that merges the statutory definition with the DoD definition satisfies academic elements and uses a model to assist in labeling that will enable this requirement.

Statutory Definition Issues

As a review, the statutory definition of terrorism as listed in 22 U.S.C. § 2656f(d) is “premeditated, political motivated violence perpetuated against noncombatant targets by subnational groups or clandestine agents.”⁹⁹ Schmid argues that the definition used by the DoS in 22 U.S.C. § 2656f(d) focuses on the political “why” an act is conducted, completely ignoring that the purpose of terror tactics is to manipulate.¹⁰⁰ The United States must develop and use a definition of terrorism that clearly follows common definitional elements, allowing for predictability in labeling acts as terrorist, which would reduce the pejorative and arbitrary use of the definition. The U.S. Government definition is not

⁹⁹Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Public Law 100-204, § 140, *U.S. Statutes at Large* 101 (1987): 1347–49, codified at *U.S. Code* 22 (2012), § 2656f(d)(2).

¹⁰⁰Schmid, 44.

clear or specific, allowing for a rather subjective process of designating terror groups that wastes effort and resources by allowing over-designation that reduces legitimacy.

Writing in *Toward a Grand Strategy Against Terrorism*, Christopher Cavoli gives two reasons why inaccurate labeling is counterproductive: it confirms that the government lacks comprehension of its opponent, and muddies the waters when clarity is required to develop a distinction between the two methods of attack.¹⁰¹ This confirms what Schmid notes as one of the major issues with the DoS definition of terrorism, which is the interpretation of noncombatant targets in relation to the definition.¹⁰² Hoffman notes there is no focus on the psychological component of terrorism, meaning that it instead focuses on the behavior of the terrorists themselves.¹⁰³ A clear, concise definition, independent from contextual considerations within the U.S. Government, would also synchronize efforts to counter terrorism by providing specific criteria to label the act as “terrorism.” This prevents designation of groups for political purposes who are not a threat to commit “terrorism” against the United States, freeing resources to counter groups who actively use such tactics.

The statutory definition identifies the target of terrorism as noncombatants, but the statute does not reference what a noncombatant is. In *The Country Reports on Terrorism 2012*, the DoS defines noncombatants as “in addition to civilians, military personnel (whether or not armed or on duty) who are not deployed in a war zone or a war-like setting.” The same document states that the noncombatant definition is only for use within the report, and does not reflect the views of the U.S. Government.¹⁰⁴

There are several problems with the lack of officially defining “noncombatants.” The first issue is that if only military members in a combat zone are combatants and therefore not targets of terrorism, then any attack by a group that is not against a fielded military force is terrorism. Ganor states that this

¹⁰¹Christopher G. Cavoli, *Toward a Grand Strategy Against Terrorism*, ed. Christopher C. Harmon, Andrew N. Pratt, and Sebastian, Contemporary Learning Series (New York: McGraw Hill Companies, 2011), 139.

¹⁰²Schmid, 46.

¹⁰³Hoffman, 32.

¹⁰⁴Bureau of Counterterrorism, *Country Reports 2012*, 293.

definition unacceptably broadens the scope of defining noncombatants to blur the lines between military forces and civilians. He used the attack against the USS Cole as an example of a terrorist group that surprised a military force, which distinguishes their actions from attacking a civilian building or structure.¹⁰⁵ Ganor argues that only using “civilians” to define the target narrows the ethical norm to be in line with international standards that distinguish between war criminals and combatants.¹⁰⁶ As Schmid notes, “what distinguishes a soldier from a war criminal is that a soldier makes this crucial distinction between combatants, non-combatants...and civilians. What distinguishes an insurgent freedom fighter from a terrorist should be no different.”¹⁰⁷ This distinction is not sufficient in the current framework because of distinct definitions enabling discretion in designation, allowing the United States to take action without regards to the impact on future operations.

In responses to Schmid’s study, discussion on noncombatants as targets centers on the moral gray area created by a lack of distinction between military and security targets, and civilians.¹⁰⁸ This indicates the issue is in attempting to use duty status of military and security forces to classify terrorism, where attackers do not distinguish between the duty statuses of Government forces.¹⁰⁹ Ganor applies the moral argument to defining the target and classifying the group, explaining that when a group attacks civilians in the pursuit of their goals, the ends can never justify the means. Once a group intentionally attacks civilians, they become a terrorist organization according to an objective measure, and not the perception of the definer.¹¹⁰

The United States’ definition encompasses all attacks, other than against military forces in a combat zone, as terrorism. This broad definition allows contextual manipulation of the definition to

¹⁰⁵Ganor, *The Counter-Terrorism Puzzle*, 23.

¹⁰¹*Ibid.*, 18.

¹⁰⁷Schmid, 68.

¹⁰⁸*Ibid.*, 45.

¹⁰⁹*Ibid.*, 47.

¹¹⁰Ganor, “Defining Terrorism,” 298.

include or exclude acts based on subjective decisions, not objective methods of classification. In the current definition, as long as a group does not target a military unit in a combat zone, they are committing terrorism according to the definition of noncombatant used by the DoS. This equates attacks on military units not in a combat zone with attacks on common civilians as both being acts of terrorism.

Another issue with the United States' statutory definition of terrorism is that it is behavior-focused, and that it does not consider the psychological purpose of terrorism.¹¹¹ Ironically, utilizing the portion "usually intended to influence an audience," which academics assumed as a part of the original statutory definition partially addresses this issue. Schmid's survey analysis revealed that this addition would only address the purpose of terrorism in a vague, incomplete manner, requiring additional clarity to address the psychological effect.¹¹² Relying on behavior allows for the manipulation of the definition to fit the context, instead of focusing on the intent of the group and the act by removing context from the situation. Ganor and Hoffman both identify fear as the purpose of a terrorism so that the terrorist can achieve a political end. They distinguish this from criminal acts because although criminals use the same types of violence to achieve their ends, they focus on material gains, not coercing political change.¹¹³ Curiously, Ganor, Gupta, and Pillar all omit the requirement of fear from their characteristics of a terrorism definition, lumping it in with the requirement for violence as a cause of fear. Schmid's survey revealed that more than half of the 109 definitions had that element, surpassed only by the inclusion of a political requirement and the use of force.¹¹⁴ According to Brian Jenkins, terrorism is "theater," emphasizing the effect that the threat or act of violence has on the public psyche.¹¹⁵ Additionally, a respondent to Schmid's survey notes, "the influence the audience is subjected to is achieved through

¹¹¹Hoffman, 32.

¹¹²Schmid, 45.

¹¹³Ganor, *The Counter-Terrorism Puzzle*, 17; Hoffman, 36–37.

¹¹⁴Schmid, 74.

¹¹⁵Brian Michael Jenkins, *Research Paper - California Seminar on Arms Control and Foreign Policy*, vol. no. 48, *International Terrorism: a New Mode of Conflict* (Los Angeles, CA: Crescent Publications, 1975), 16.

fear,” an element that is not addressed in the current definition.¹¹⁶ Understanding that fear is a required purpose of terrorist acts reveals how a terrorist organization will act to accomplish that purpose. The U.S. statutory definition does not acknowledge the psychological purpose of terrorism, allowing interpretation of acts as terrorism without regard to their purpose, which directly contradicts the academic understanding of terrorism.

The statutory definition is deficient in two very important aspects that render the definition excessively vague, reducing predictability and hindering effective identification of terrorism. Using “noncombatant” to describe the target of terrorism is inadequate because there is not a United States statutory definition that adequately gives meaning to this word as part of the definition of terrorism. The DoS definition of noncombatant only excludes deployed, armed military forces in a combat setting, including all other targets as terrorism.¹¹⁷ The lack of purpose in the statutory definition allows labeling simple crimes as terrorism because there is no distinction between the material motivation of crime and psychological motivation of terrorism. These two deficiencies lead to the proposal of an alternative definition that capitalizes on the strengths of the DoD and statutory definitions, and meets academic guidelines for terrorism definitions.

Alternative to the Statutory Definition

The purpose in proposing an alternative definition is to show that the statutory requirements and academic elements of defining terrorism can be met, providing a clearer, more concise definition that requires less interpretation. This counters bureaucratic theory, in which Graham Allison asserts that organizations will make decisions to allow leeway in how they implement them, which the current statutory definition reflects.¹¹⁸ Key terms within the definitions – intentional, politically motivated, coerce

¹¹⁶Schmid, 45.

¹¹⁷Bureau of Counterterrorism, *Country Reports 2012*, 293.

¹¹⁸Raymond Tanter, *Theory and Policy in International Relations*, ed. Richard H. Ullman (Princeton, NJ: Princeton University Press, 1972), 53.

and civilian –clearly delineate the criteria of terrorism to prevent the possibility of word interpretation that creates a lack of clarity. Providing specified definitions to these key words allows for clarification, and prevents definition creep that would result in mislabeling acts as “terrorism” when they are actually guerrilla or criminal violence.

Combining Cabinet Definitions

To make the United States’ statutory definition more effective to identify terrorism, there must be an addition that focuses on the psychological aspect and a more narrow definition of noncombatant. This definition blends the statutory definition with the DoD version to accomplish Ganor’s three elements while sufficiently framing critical words within the definition. The following serves as a blend of the two definitions: “Terrorism is the illegal use or threat of intentional, politically motivated violence against civilian targets by subnational groups or clandestine agents to instill fear in a population or coerce a government.”

This definition, while not officially vetted, combines the strengths of both definitions and meets the required characteristics of a definition as outlined in the literature review. Although there is no consensus list of attributes required in a definition, the proposed definition addresses the top seven academic characteristics and all of the characteristics compiled from 88 governmental definitions as compiled by Schmid.¹¹⁹ In its separate components, it addresses the threat or use of violence, intentional conduct, political motivation, distinguishing civilian and military targets, identification of non-national actors, the psychological effect on a population, and coercive effect on a government. Each of these elements provides distinction in defining terrorism, distinguishing it from other methods of violence. Ganor argues that a clearer definition would place pressure on designated groups to target government forces using guerrilla tactics instead of targeting civilians, reducing civilian casualties in the process.¹²⁰

¹¹⁹Schmid, 74–75.

¹²⁰Ganor, *The Counter-Terrorism Puzzle*, 24.

Mentally Modeling a New Definition

The model in Figure 1 provides clarity and objectivity to the proposed statutory definition to determine whether an attack is terrorism, thereby aiding in the designation of terrorist organizations. The model explains the elements of the proposed statutory definition and their relationship to each other, while distinguishing between guerrillas and terrorists. Reading Figure 1 from left to right, the model focuses on three different parties: the undesignated group, the civilian population (represented by the arc describing the audience, etc.), and the government. The model recognizes that both terrorists and guerrillas seek a political effect, but achieve their ends using different means in whom they target. The model also recognizes that legitimate interaction between the disaffected group and the government has failed, leading the group to resort to violence to achieve their political aims.

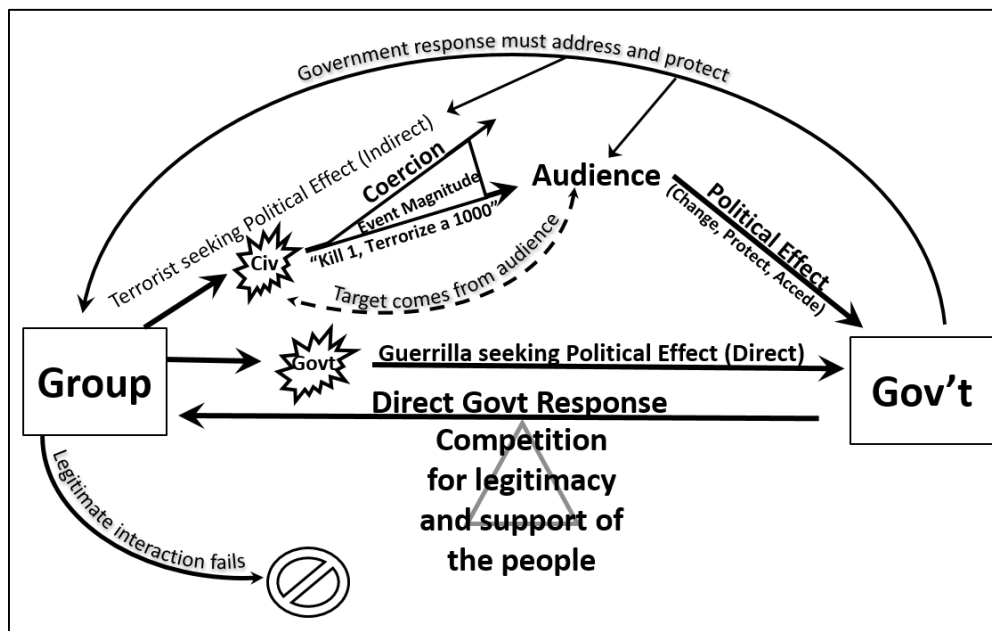


Figure 1. Model of Guerilla Tactics vs. Terrorism

Source: Author.

In Figure 1, guerrillas directly target government forces because, as Ganor points out, they are specifically attempting to avoid civilian casualties by following moral norms in the conduct of combat.¹²¹ Paul Wilkinson utilizes Mao Tse-Tung's concept of gaining the mass support of the people to describe the goal of guerrilla warfare, and this idea provides the basis for revolutionary struggle.¹²² In the model, the competition between the two parties for legitimacy and support of the people signifies the goal. This direct action towards the government entity elicits a government response, and civilians are not the target, although they may become collateral damage during the violence. This action does not exclude guerrilla forces from using various methods against the government; it only limits acceptable targets to government forces.

Ganor argues that terrorists seek a political effect by targeting the “soft underbelly” of civilian targets, which reaps the impact of fear and media frenzy that surrounds such attacks.¹²³ In the model, groups using terrorism indirectly seek political effect by attacking a civilian target, creating a coercive impact related to the magnitude and type of the event. Although not required, if the civilian target comes from the audience, the coercive influence increases by creating an “it could happen to me” effect. The affected audience is the driver for the terrorist's political effect on the government, although the terrorist cannot predict or control this outcome. Paul Wilkinson describes this effect, noting that despite the drastic increase in modern terrorism events, this method is remarkably unsuccessful in achieving strategic objectives.¹²⁴ The government's response attempts to address the terrorists directly while protecting the audience. While shown linearly, the interaction between the three groups is circular and, in most cases, is a vicious downward cycle.

¹²¹Ganor, *The Counter-Terrorism Puzzle*, 18.

¹²²Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response*, 2nd ed., Cass Series: Political Violence (London: Routledge, 2006), 14.

¹²³Ganor, *The Counter-Terrorism Puzzle*, 18.

¹²⁴Wilkinson, 16.

The definitional alternative provides a more complete description and distinction of terrorism from other forms of violence. In addition to strengthening the composition of the definition, it specifically addresses the two glaring weaknesses addressed in academic discussions. Utilizing Figure 1 to aid in distinguishing terrorism from guerilla actions gives an objective tool for identifying terrorism, increasing the efficacy and effectiveness of the proposed definition. Increasing the objectivity of the definition also leads to more predictability and a moral “line in the sand” that encourages violence to be focused on government forces and not on civilians.

To summarize, the United States’ definitional focus on the ambiguous nature of noncombatants and lack of identifying purpose, creates vagueness in the definition and enables mislabeling acts of violence as terrorism. Adapting the statutory terrorism definition to be independent of perspective distinguishes targets and identifies the purpose of terrorism, providing predictability in labeling the act. The definitional alternative provides these objective measures: strengthening the definition, and complementing the visual model for identifying terrorism. Chapter 2 will identify the effect that improving the definition of terrorism will have on reducing the “discretion in designation” of terrorist groups and mislabeling of groups based on a misunderstanding of their act, and provide a recommendation on consolidating definitions.

FUNCTIONAL ERRORS IN THE FRAMEWORK

The United States constructs its framework for designating terrorist groups around allowing discretion in designation utilizing multiple layers of sanctions. The framework is a collection of E.O.s, U.S.C. statutes, and Public Law that authorizes the Secretary of State to designate groups as “terrorist” in coordination with the Treasury Secretary and the Attorney General. Since the framework utilizes vague and separate definitions of terrorism for each sanction, designating a terrorist organization can be a subjective, sometimes political, exercise. The Secretary of State’s ability to exercise discretion in nominating a group for a particular list reflects this subjectivity. The use of the current framework to designate terrorism, while flexible, is flexible through subjectivity criteria and discretion in designation. This allows for the identification of guerrillas as “terrorists” where they might otherwise only be fighting the government.

Placing a group on the FTO list has a political effect and creates diplomatic leverage by signifying the attention that the United States is giving to the group, which legitimates the host countries’ efforts.¹²⁵ This creates the appearance of an U.S.-host nation alliance against the designated group, and can be a powerful tool to gain concessions in diplomatic negotiations.¹²⁶ In some cases, however, designating groups to increase political maneuver space can create the appearance of inconsistent application, and make the United States seem hypocritical in its approach.¹²⁷

While it is not appropriate to dispute sanctioning these irreconcilably violent groups, it is possible to question sanctioning groups that do not directly threaten the United States’ citizens or national security as political leverage, which lowers the efficacy and legitimacy of the sanctions. Many of these groups will never disavow using terrorism tactics to advance their cause. These groups, such as Al-Qaida, Aum

¹²⁵Pillar, 153; Cronin, “The ‘FTO List,’” 8.

¹²⁶Cronin, “The ‘FTO List,’” 8–9.

¹²⁷*Ibid.*, 9.

Shinrikyo, and Revolutionary Organization 17 November, directly target civilians to coerce governments or cause fear in the population.¹²⁸ The United States has a responsibility to protect its citizens and national security by assisting partner nations in degrading terrorist group capabilities. Financial and immigration sanctions through terrorist group designation assist in disrupting these groups' operations. Sanctions affect not only those designated groups and individuals, but also the vast support network they depend upon. Pillar states that the point of sanctions is to prevent access to financial, material resources, and support for those who directly threaten the United States' national defense, foreign relations, or economic interests. In turn, sanctions target those who indirectly threaten the United States by supporting "terrorist" entities.¹²⁹ Pillar and Cronin acknowledge that the SDN framework has been somewhat successful in blocking financial assets, and prosecuting or deporting individuals and groups for violations.¹³⁰ The United States must take the lead in using effective sanctions to disrupt terrorist groups, using the framework in a consistent fashion to designate groups, and enhancing the legitimacy of the lists and their sanctions.

There are two problems with the framework's ability to distinguish between terrorist groups affecting the United States national security and guerrilla groups. The first issue with the framework is the subjective designation of "terrorist" groups, using separate definitions of terrorism and elements to identify groups. Utilizing separate, vague definitions and elements creates multiple standards of designation lists some groups inappropriately because of their tactics, not because of their purpose. The second problem is that subjectivity allows for excessive discretion in designation, both in sanctioning and not sanctioning groups. This discretion allows the use of designation as a political tool and not an objective process, which has complicating effects at the operational level, and reduces the legitimacy of

¹²⁸Bureau of Counterterrorism, *Country Reports 2012*, 278–279, 250–251, 285–286.

¹²⁹Paul R. Pillar, 151.

¹³⁰Paul R. Pillar, 151; Cronin, "The 'FTO List,'" 7.

the designation. This chapter will address the effects of vague and separate definitions on the terrorist group designation process and the corresponding issues in United States' terrorist designation framework.

Faults of Using Separate Definitions and Elements

The terrorism designation framework has three distinct designations – FTO, SDGT, and TEL – applied to groups as discussed in the literature review. Authority to designate groups on the lists rests with the Secretary of State; the Treasury Secretary may also designate groups as SDGTs.¹³¹ The advantage to having different forms of designation allows bureaucratic flexibility to counter the speed at which groups and individuals can change aliases. This advantage diminishes when each designation utilizes separate definitions of “terrorism” or “terrorist activity” as a basis for designation, which sometimes inappropriately lists groups based on their tactics, not on their purpose. Related to this issue is the lack of academic research on the relationship between each designation, their related sanctions, and military and diplomatic operations. Designations as a FTO and SDGT are the focus of the discussion on this relationship because they prohibit the interaction of any U.S. person with designated groups to hamper military and diplomatic operations. Comparing the definition for designating FTOs to the definition used to designate SDGTs demonstrates the issues with using both lists to designate groups because it shows the potential for inconsistent application. Comparing the elements required to designate groups under each sanctions program reinforces the potential for inconsistent application because it suffers from the same issues.

There was no academic analysis found during the research for this monograph that compared FTO and SDGT definitions. All definition information is from U.S.C. or E.O.s, as appropriate, to authenticate the sources and provide direct comparisons. As a review and for direct visual comparison, the definition of terrorism to designate a FTO is “premeditated, political motivated violence perpetuated

¹³¹Cronin, “The ‘FTO List,’” 2.

against noncombatant targets by subnational groups or clandestine agents.”¹³² This is in comparison to the definition of terrorism used to designate a SDGT:

- (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and
- (ii) appears to be intended—
 - (A) to intimidate or coerce a civilian population;
 - (B) to influence the policy of a government by intimidation or coercion; or
 - (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage taking.¹³³

The first issue is that the structure and composition of the two definitions are different. The FTO definition suffers from the faults identified in Section One, but at least provides a single, coherent sentence that describes terrorism, relying on that analysis here. The FTO definition is a single sentence that describes what “terrorism is”, while the SDGT definition gives two required, separate elements, and the second element can fit any of three different circumstances. Both definitions identify violent actions as the focus of the definition, but the SDGT definition provides the widest possible categorization of violent acts – against human life, property, or infrastructure – as terrorism in its first element, and also gives specific violent acts in the second element. This violates academic characteristics of terrorism in two respects: it does not distinguish between combatants and noncombatants, and it categorizes property damage as a form of terrorism. The excessively broad view of who is a target of terrorism does not distinguish between combatants and noncombatants, possibly counting attacks against fielded military forces as terrorism. This counters analysis by Ganor, Gupta, Hoffman, Pillar, and Schmid, all who assert there must be distinction between combatants and noncombatants in a terrorism definition.¹³⁴

Categorizing property damage as terrorism directly counters the analysis by Schmid, which states that labeling property damage as terrorism removes analytical vigor by recognizing sabotage and arson as

¹³²Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Public Law 100-204, § 140, *U.S. Statutes at Large* 101 (1987): 1347–49, codified at *U.S. Code* 22 (2012), § 2656f(d)(2).

¹³³Bush, 49080.

¹³⁴Ganor, *The Counter-Terrorism Puzzle*, 17; Gupta, 9; Hoffman, 32; Pillar, 14; Schmid, 46–47.

meeting the definition criteria.¹³⁵ The first element of the SDGT definition is ineffective because it can result in an event causing the classification of a group as an SDGT that is not a threat to humans.

The second element of the SDGT definition identifies the apparent purpose of the terrorist act in three parts and is relatively coherent, covering the purpose of terrorism as coercion that is missing in the statutory definition. The second element is an “or” requirement, establishing that any of the three parts will suffice to fulfill the second element. The first two parts recognize the coercive nature against the population and against the government, a feature that Ganor, Gupta, Hoffman, and Pillar all require in their definitional analysis.¹³⁶ The third part of the second element, which references the forms of violence, is unnecessary to the description of the conduct of terrorism by giving specific behaviors that can lead to a misunderstanding of a group’s actions.

Three hypothetical examples illustrate the breadth and vagueness of the SDGT terrorism definition, which makes it unsuitable for use because it allows the classification of groups as SDGTs who are not a threat to the United States. The first example is an example of a political group in a foreign country that kidnaps a political rival during an election cycle to force concessions or actions by the ruling party in government, fulfilling both elements and qualifying as an SDGT according to definition. A second example is an activist group in a foreign country who conducts arson against infrastructure to protest the stance of their government on a particular social or political issue. This group qualifies as an SDGT because the group used violence against infrastructure to manipulate the government. The third example is a guerrilla group in a foreign country who attacks military or security force targets of their government in an attempt to rebel against perceived civil rights abuses, qualifying them as an SDGT since they utilized violence to coerce the government. None of the three scenarios fit the statutory definition of terrorism to designate the groups as FTOs, but all of them fit the SDGT definition. Utilizing a definition that allows these scenarios to be qualified as an SDGT violates the academic elements of terrorism, and is

¹³⁵Schmid, 71, 84.

¹³⁶Ganor, “Defining Terrorism,” 288; Gupta, 10; Hoffman, 37; Pillar, 14.

excessively broad in its approach. It also creates diplomatic issues when those theoretical groups come to power in their respective governments, but the sanctions prevent U.S. diplomats from interacting with the newly elected “SDGT” groups in accordance with 18 U.S.C. §2339B. The definition of terrorism for both designations should be the same to alleviate issues in using dissimilar designations because they lose meaning as a set of definitions when they include nearly all possible scenarios. Utilizing a definition that fulfills all of the academic elements would improve this issue while allowing for some flexibility in the interpretation of the actions.

The definition used by the SDGT framework, while marginally better in identifying the purpose of terrorism, provides no distinction between combatants and noncombatants instead providing an overwhelmingly broad inclusion of targets of terrorism. Utilizing this vague definition supports excessive discretion in designating groups as SDGTs when the designating authority is unable to fulfill the more stringent FTO definition. Using SDGT designation as a “workaround” creates an environment of discretion and hypocrisy in the justifications to list some groups as terrorist while not listing other groups. The next section addresses this discretion in designation in the FTO and SDGT framework that creates a perception of hypocrisy in designating groups, and how the designations are justified.

Consequences of Excess Discretion in Designation

The U.S. terrorist group framework has a great deal of flexibility and discretion in the designation process. Both the FTO and SDGT designations have established designation criteria that are outlined in 22 U.S.C. § 2656f and E.O. 13224, respectively. In 2011, Jongman related the list of FTOs as very small in relation to the number of existing violent groups worldwide, which according to the 2011 *Routledge Handbook* numbered well over 3,800 at the time.¹³⁷ Cronin also identified that the number of groups on the FTO list represents a fraction of the overall number, but reflects the more durable international

¹³⁷Albert J. Jongman, *The Routledge Handbook of Terrorism Research*, ed. Alex Peter Schmid, Routledge Handbooks (New York: Routledge, 2013), 344–48.

terrorism groups that threaten the United States.¹³⁸ While this data indicates that the U.S. does not wantonly designate groups, it does not address the ability for the Secretary of State to exercise discretion in listing or not listing groups. Applying the framework in an inconsistent manner jeopardizes the legitimacy of the sanctions and the credibility of the framework, leading to charges of hypocrisy in the application of the designations.

Donohue and Pillar separately discuss the criteria used to designate SDGTs and FTOs, respectively, and both of their discussions acknowledge the effect of excessive discretion in designation. Pillar only recognizes the three FTO designation criteria, and notes that, as of 2003, the financial and “support to terrorism” prosecutions have had a negligible effect with the deportation clause providing the greatest effect.¹³⁹ Pillar identifies the greatest advantage of the FTO list is the stigma attached to a group placed on the list, signifying the official U.S. opposition to the group’s activities, providing justification for other sanctions to take place.¹⁴⁰ Pillar identifies political and diplomatic considerations as one of the drawbacks that affect the designation process because the Secretary of State is only “authorized” to designate rather than requiring designation.¹⁴¹ Pillar recognizes that the Secretary of State’s discretion, while a negotiation tool, is also a liability by diminishing the value of the FTO list as exceptions are applied.¹⁴² He uses the example of excluding the Irish Republican Army (IRA) as a designation as an FTO. While the IRA certainly threatened the United States interests, incorporating it into the peace process was more important than sanctioning the group.¹⁴³ Pillar concludes his analysis of this weakness by charging that inconsistent application of the designation generates skepticism about the consistency of

¹³⁸Audrey Kurth Cronin, *How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns* (Princeton, NJ: Princeton University Press, 2011), 75.

¹³⁹Pillar, 151.

¹⁴⁰*Ibid.*, 152.

¹⁴¹*Ibid.*, 153.

¹⁴²*Ibid.*

¹⁴³*Ibid.*

the U.S. designation process.¹⁴⁴ This discretion in designation can have a negative political and diplomatic effect if seen as hypocritical, while having a negative effect on military operations when the United States inaccurately designates a group through poor discretion.

Donohue is more incredulous at the power given to the Secretaries of State and the Treasury through E.O. 13224. Her primary issue with the SDGT criteria is the breadth of power it gives to the Secretaries of State and the Treasury's authority to designate any group who might be associated with terrorists, as well as anyone who associates with those on the list, as is the authority of the Secretary of the Treasury.¹⁴⁵ Donohue says this exceptionally broad framework essentially removes any need to develop the intent of the group, instead relying only on their actions, which can unknowingly be connected to terrorism.¹⁴⁶ This discretion in designation enabled by such wide criteria falls prey to the same faults as Pillar discussed in the FTO designation, namely that inconsistent designation practices reduce the legitimacy of the listing.

Narrowing a Discretionary Designation Process

There is no easy way to narrow the discretion in designating FTOs or SDGTs beyond implementing a strict review of the designation process, and having a more transparency in linking the group to terrorism. Enabling multiple in-depth interagency reviews of a group and their activities will assuage the feeling of hypocrisy through discretion in the designation. These in-depth reviews can only provide complete, accurate, and unbiased information about the group through a competent definition of terrorism and designation framework as discussed previously in this chapter. Transparency in the designation process also precludes charges of hypocrisy by directly linking how the group threatens the United States to their designation. This transparency must extend to all designations, with judicial review

¹⁴⁴Pillar, 153.

¹⁴⁵Donohue, 166.

¹⁴⁶Ibid.

and regular justification of continued sanctions required to keep a group on the list. Implementing these two processes will remove some of the discretion currently possessed by the DoS in designating groups. It will also reduce the second- and third-order effects that designation for political purposes has on interaction with designated groups at the operational diplomatic and military levels.

To summarize, the designation framework requires fixes to the two identified issues to make the process more effective. Using separate definitions and elements to identify groups as terrorist reduces the meaning of the designation by encompassing almost all scenarios, especially for the SDGT process. Combining the definitional breadth with the discretion in designation creates an inherently inconsistent labeling process, exacerbated by political and diplomatic influences. There is no clearly identified fix to these issues other than to improve the processes and definitions that the framework uses, increasing transparency, which increases the legitimacy of the designation. Increased transparency and rigor will reduce the opportunity for inconsistent designation practices to negatively impact diplomatic and military operations when interacting with listed terrorist groups. Two examples of this are in the case studies where the designation of the MeK and CPN(M) demonstrates the negative impacts of unclear definitions and designations on military and diplomatic operations.

CASE STUDIES

The Mujahedin-e Khalq and the United States

This section presents the first of two case study tests, the Mujahedin-e Khalq, also known as the Peoples Mujahedin Organization of Iran (PMOI).¹⁴⁷ The results support the theory of the United States' inconsistency in designating terrorist groups because of wide discretion in the framework leading to difficulty in military and diplomatic operations. This section provides a case study test of FTO designation of the MeK, and the impact on Coalition operations during Operation Iraqi Freedom (OIF) from 2003-2012, when the MeK was delisted as an FTO. The argument is that the designation of the MeK negatively affected Coalition operations because of the inconsistent application of the designation criteria and statutory definition. The designation of the MeK has proven a controversial topic on the application of FTO sanctions versus the impact on Coalition operations in a combat environment.

This argument develops in four steps. First is the motivation for selecting the MeK as a case study. Second is an outline of the main events surrounding the MeK's history, designation, and interaction with Coalition forces during OIF. Third is identifying the impacts of the FTO designation on the MeK and the United States' operations. Fourth is assessing the theory and conducting a brief summary.

The MeK are a unique case study on the effect of inconsistent FTO designation on military combat operations. According to the U.S. Department of State's "Foreign Terrorism Organization" website, the MeK is one of only nine groups designated as an FTO ever delisted. A further correlation between the "FTO" website and the SDGT list reveals that out of the four groups delisted as FTOs in the past decade, only the MeK does not remain listed on the SDGT list, and is one of only two groups ever

¹⁴⁷This case study will refer to the Mujahedin-e Khalq simply as "MeK" throughout, although the group is known by several aliases, including "People's Mujahedin Organization of Iran" (PMOI) or "National Council of Resistance of Iran" (NCRI), which are the names that are recognized in the petitions heard by the U.S. District Court of Appeals for D.C.

delisted as an SDGT.¹⁴⁸ The MeK is also the only FTO directly involved in any U.S. large-scale combat operations out of all the delisted groups.¹⁴⁹ The MeK first opposed the U.S. in the Iranian Revolution of the 1970s, but later allegedly offered to assist U.S. forces during OIF, the only group to do so on the list. The MeK are a highly controversial group, receiving tremendous political and legal support in their bid for delisting. The MeK case study provides several unique features that can be replicated in future operations.

Three students in Tehran founded the Mujahedin-e Khalq in 1965 to oppose Shah Mohammed Reza Pahlavi, who they viewed as a U.S. Government puppet, responsible for unwanted Western influence on the government.¹⁵⁰ They embodied Marxist principles and Shi'a Islamic values in their violent struggle against the Iranian government, which began with their thwarted attempt at sabotaging a Tehran power station in 1971.¹⁵¹ Despite the general crackdown that followed their attempt, in which the Iranian government executed the founding members, the MeK continued violent opposition to the Shah throughout the 1970s. This violent opposition included attacks against Iranian infrastructure, and the assassination of three U.S. military officers and three U.S. contractors.¹⁵²

Masud Rajavi took leadership of the MeK during the Iranian Revolution of 1977–1979 after the Shah released thousands of political prisoners, including Rajavi.¹⁵³ Rajavi aligned the MeK with Ayatollah Khomeini after the fall of the Shah in 1979, but Khomeini issued a *fatwa* forbidding Rajavi from running for president. This resulted in Rajavi turning the MeK against Khomeini's Islamic Republican Party (IRP) with violent attacks against government officials, including the 1981 bombing of

¹⁴⁸U.S. Department of State, "Individuals and Entities Designated by the State Department under E.O. 13224," <http://www.state.gov/j/ct/rls/other/des/143210.htm> (accessed 19 March 2014).

¹⁴⁹Department of State, "Foreign Terrorist Organizations".

¹⁵⁰Ervand Abrahamian, *The Iranian Mojahedin* (New Haven: Yale University Press, 1989), 88.

¹⁵¹Jeremiah Goulka et al., *The Mujahedin-e Khalq in Iraq: a Policy Conundrum* (Santa Monica, CA: Rand Publishing, 2009), 2.

¹⁵²*Ibid.*

¹⁵³Abrahamian, 171.

the IRP headquarters that killed 70 IRP leaders. After the IRP suppressed the MeK with brutal tactics, Rajavi fled to Paris to form an Iranian dissident, umbrella group while his followers crossed the border into Iraq or formed underground cells.¹⁵⁴

After Iraq's invasion of Iran in 1980 and the failed MeK uprising in 1981, Saddam Hussein began funding the MeK in exchange for intelligence, eventually leading to Saddam's invitation to the MeK leadership to join forces against Iran. Utilizing these resources, Rajavi formed the MeK into several well-armed communes, and assisted Saddam in raiding across the Iranian border, resulting in a quarter of his 7,000 members as casualties.¹⁵⁵ During this time, Rajavi implemented group indoctrination and psychological manipulation in order to sharpen the MeK's revolutionary ideology and maintain control as the MeK's leader.¹⁵⁶ After Operation Desert Storm in 1991 in which the MeK saw little action, they continued to oppose the Iranian government throughout the 1990s while attempting to reform their image into a quasi-political party.¹⁵⁷ This approach failed, however, and the MeK was among the groups initially listed by the DoS as a FTO on 8 October 1997, ostensibly for their connections and support of the Iraqi government.¹⁵⁸ The MeK's political lobbying increased after their listing, focusing on members of the U.S. Congress to rescind the FTO designation, and recognize the MeK as a political activist group.¹⁵⁹

Leading up to OIF, U.S. war planners viewed the MeK as an unofficial part of Saddam's military because of their armament, training, and cohesion. However, the planners did not give field commanders any guidance about how to treat the MeK, and after tactical-level negotiations, the MeK agreed to a

¹⁵⁴Goulka et al., 2–3.

¹⁵⁵Ibid., 3.

¹⁵⁶Ronen Cohen, *The Rise and Fall of the Mojahedin Khalq, 1987-1997: Their Survival After the Islamic Revolution and Resistance to the Islamic Republic of Iran* (Brighton England: Sussex Academic Press, 2009), 36.

¹⁵⁷Ibid., 162–163.

¹⁵⁸Ibid., 171.

¹⁵⁹Ibid., 172.

cease-fire in April 2003 that allowed them to retain their weapons.¹⁶⁰ A new agreement brokered in May 2003 disarmed the MeK, but did not force their surrender, instead consolidating the entire organization at their traditional headquarters at Camp Ashraf.¹⁶¹ During this time, staff lawyers for the U.S. forces debated the MeK's legal status since they were both a listed FTO non-state actor and a belligerent that operated with Iraqi forces, as well as Iranian exiles.¹⁶² In an attempt to determine their status, a review board convened, but did not determine each individual's legal status as required under the Third Geneva Convention; instead, it only determined each member's intelligence value and threat level to Coalition forces.¹⁶³ Nearly all MeK members were determined to be "release-eligible" and allowed to stay in their assigned residence at Camp Ashraf.¹⁶⁴

Meanwhile, on 9 December 2003, the Iraqi Governing Council (IGC) voted to expel the MeK within the next six months without identifying a destination. No other country would accept any members of a designated FTO, and the United Nations High Commissioner for Refugees (UNHCR) refused them refugee status because their legal status was not determined.¹⁶⁵ As the June 2004 transfer date approached and no status had been determined, Secretary of Defense Rumsfeld designated the MeK as civilians protected by the Fourth Geneva Convention. This rash designation without tribunal review caused both legal and policy issues for the U.S. Government.¹⁶⁶ This designation countered official U.S. policy that the Geneva Conventions did not apply to foreign terrorists in Iraq, and the only solution was detention. This made the MeK a FTO, protected party under the Geneva Conventions, meaning the U.S. had

¹⁶⁰Goulka et al., 11.

¹⁶¹Ibid., 12.

¹⁶²Ibid., 13.

¹⁶³Ibid., 15–16.

¹⁶⁴Ibid., 17.

¹⁶⁵Ibid., 18.

¹⁶⁶Ibid., 19.

conflicting requirements to detain and prosecute them while also protecting them and providing assigned residence instead of detention.¹⁶⁷

Because of their strong political support and lobby, the MeK were able to mount six challenges to their FTO designation, including the U.S. Court of Appeals D.C. Circuit decision, *In Re: People's Mojahedin Organization of Iran* (2012), ordering the DoS to review the designation of the MeK.¹⁶⁸ The DoS denied each petition by the MeK through the D.C. Circuit Court of Appeals prior to the *writ of mandamus*, citing review of information sources that did not reveal any significant change in the MeK's designation criteria.¹⁶⁹ During these challenges, in 1999, the D.C. Circuit Court of Appeals found that of the three FTO designation criteria, the third challenge—that the organization's activities threaten U.S. nationals or national security—was an unreviewable political question.¹⁷⁰ The MeK petitioned the D.C. Circuit Court of Appeals for a *writ of mandamus* on 1 June 2012, which found that DoS exceeded the statutory 180-day review requirement on the 2010 petition. The Court ordered the DoS to conduct a review within the next four months from the date of writ.¹⁷¹ The writ stated that if the DoS did not take action within the prescribed four months, the Court would set aside the FTO designation.¹⁷² On 21 September 2012, the DoS issued a press release delisting the MeK as a FTO and SDGT, citing the MeK's "renunciation of violence, absence of confirmed acts of terrorism for more than a decade, and their cooperation in closing Camp Ashraf."¹⁷³

There are several consequences of the FTO designation of the MeK, most of them negatively affecting the United States military operations and its image. The impact of the designation on the MeK

¹⁶⁷Goulka et al., 22.

¹⁶⁸*In Re: People's Mojahedin Organization of Iran*, No. 12-1118, slip op., 2 (D.C. Cir. 1 June 2012).

¹⁶⁹*Ibid.*, 5-6.

¹⁷⁰*Ibid.*, 5.

¹⁷¹*Ibid.*, 8-11.

¹⁷²*Ibid.*, 12.

¹⁷³U.S. Department of State, "Delisting of the Mujahedin-E Khalq," <http://www.state.gov/r/pa/prs/ps/2012/09/198443.htm> (accessed 20 March 2014).

before the beginning of OIF is not well researched, other than the ensuing legal challenges and political lobby to be delisted. The pace of legal challenges and political lobbying can be attributed to the derogatory effect that being “on the list” had on the MeK’s ability to raise funds and legitimate its cause. Because Saddam Hussein supported the MeK during their initial FTO and SDGT designation, and lead-up to OIF, the impact was primarily on the flow of money from the United States. In the lead-up to OIF Goulka, et al., states in a RAND study on the MeK that Coalition planners did not adequately define a military mission regarding the MeK because of their confused status.¹⁷⁴ Goulka, et al., states that throughout OIF, the U.S. did not treat the MeK as an FTO because of the desire to use them as a possible ally and intelligence-gathering resource, exposing the U.S. to criticism about its inconsistent approach.¹⁷⁵ It is apparent from the series of *PMOI v. Department of State* petitions that the legal scrutiny placed on the designation criteria revealed that the system relies on discretion, especially in determining the group’s threat to national security. While the sanctions hurt the MeK’s ability to operate as an organization, it is clear there was an effect on the United States’ operations as well.

Given the characteristics presented above, the outcome corresponds with the theory’s prediction. The theory predicts that the United States is inconsistent in designating terrorist organizations because of discretion and a vague definition of terrorism. The failure to achieve accurate classification then has a negative effect on military operations. In the case of the MeK, the inconsistent application of designation criteria is evident, resulting in negative effects on the United States’ operations.

Goulka, et al., makes two recommendations to alleviate the negative issues that occurred because of the confused military operations with the MeK that apply to the theory. He first recommended that military planners should coordinate with the DoS and White House to identify specific objectives and clear rules of engagement regarding the treatment of belligerent groups that are politically sensitive.¹⁷⁶

¹⁷⁴Goulka et al., 35-36.

¹⁷⁵Ibid., 41.

¹⁷⁶Ibid., 50.

His next recommendation is that the Departments of State and Defense must coordinate to manage communications about the designation of groups both on the battlefield and in the designation framework.¹⁷⁷ The *PMOI v. Department of State* petitions imply a recommendation that the United States must review and clarify the designation criteria to allow for legal review and consistency in designating groups. The evidence from the case study supports the hypothesis and suggests that the United States must review its designation procedures and criteria.

The MeK are a unique case study in their multiple levels of involvement with U.S. military and diplomatic operations. While they were obviously a violent group that opposed the U.S. during the Iranian Revolution of the 1970s, basing their terrorist designation off these incidents obviously degraded the United States' operations. The degradation occurred because the U.S. utilized discretion to maintain the MeK on the list without acknowledging their change in purpose or threat level to the U.S. The evidence indicates that these circumstances could reoccur if there are not improvements to the designation criteria.

¹⁷⁷Goulka et al., 52.

The Communist Party of Nepal (Maoist) and the United States

This section presents the second of two case study tests, the Communist Party of Nepal (Maoist). The results tend to prove the theory of the United States' inconsistency in designating terrorist groups because of wide discretion in utilizing multiple designations within the framework that complicates diplomatic relations. This section provides a case study test of SDGT designation of the CPN(M) and the impact on diplomatic interactions during the CPN(M) rise to power. The argument is that the politically motivated designation of the CPN(M) was enabled by broad SDGT terrorism definition and evaluation criteria. The inconsistent application of SDGT sanctions is not explained without considering the vague definition and broad discretion in designation application.

This argument develops in four steps. First is the motivation for selecting the CPN(M) as a case study. Second is an outline of the main events surrounding the CPN(M)'s history, designation and after their rise to power, their interaction with U.S. diplomats. Third is identifying the impacts of the SDGT designation on the CPN(M) and the United States. Fourth is to assess the theory and conduct a brief summary.

The CPN(M) is a unique case study on the effect of discretionary use of multiple terrorist organization designations to achieve FTO-like sanctions. According to the Department of State's "Terrorist Exclusion List" website, the CPN(M) is the only group ever delisted from the TEL.¹⁷⁸ The DoS also lists the CPN(M) as one of only two groups ever delisted from the SDGT, the other group being the MeK.¹⁷⁹ Further, the CPN(M) is one of only three U.S.-sanctioned terrorist groups to win a democratic election besides Hezbollah and Hamas.¹⁸⁰ The CPN(M) case study provides a perspective on designating a group as a SDGT utilizing very broad designating criteria and definition and the impact of discretionary

¹⁷⁸U.S. Department of State, "Terrorist Exclusion List," <http://www.state.gov/j/ct/rls/other/des/123086.htm>. (accessed December 14, 2013).

¹⁷⁹U.S. Department of State, "Individuals and Entities Designated Under E.O. 13224."

¹⁸⁰Joshua Gross, "Proscription Problems: The Practical Implications of Terrorist Lists On Diplomacy and Peacebuilding in Nepal", *Praxis: The Fletcher Journal of Human Security* 26 (2011): 40.

designation on diplomatic relations.

The Communist Party of Nepal (Maoist) came to being out of the combination and splitting of several Leftist movements that opposed the corrupt, centrist government of Nepal between 1949 and 1990.¹⁸¹ It arrived in its current form in May 1994, when the Communist Party of Nepal (Unity Centre) (CPN(UC)) split into two factions because of animosity between party leaders, but communicated under the guise of ideological differences.¹⁸² The CPN(M) took form in March 1995 under the leadership of Prachanda, a former general secretary of the CPN(UC), who developed a campaign to conduct a “people’s war” to usher in a new form of government after being locked out of mid-term elections in 1994.¹⁸³ After organizing the party and developing support, in February 1996 the CPN(M) then submitted a list of 40 demands to the Prime Minister, which if not met by February 17, 1996, would result in the start of an armed struggle. When the Prime Minister ignored the CPN(M) they struck an Agricultural Bank and burned its loan papers, beginning the “people’s war”.¹⁸⁴

During the first five years of the “people’s war”, attacks by the CPN(M) were largely confined to raids on remote police posts, gradually moving from small incidents to large scale attacks on police stations, creating a power vacuum that fostered local support for the CPN(M) as they opposed the monarchy.¹⁸⁵ The increasing size and intensity of the attacks led the government to activate a portion of the Royal Nepalese Army (RNA) in March 2000 to support the police in countering the CPN(M).¹⁸⁶ After Prince Dipendra killed the king and queen along with eight other Royal Family members in the Royal Family Massacre in June 2001, the unpopular brother to the late king, King Gyanendra, was crowned and

¹⁸¹Deepak Thapa and Bandita Sijapati, *A Kingdom under Siege: Nepal's Maoist Insurgency, 1996 to 2003*, updated ed. (Kathmandu: The Printhouse, 2004), 43-44.

¹⁸²*Ibid.*, 43.

¹⁸³*Ibid.*, 45.

¹⁸⁴*Ibid.*, 48.

¹⁸⁵*Ibid.*, 106.

¹⁸⁶Michael Hutt, *Himalayan People's War: Nepal's Maoist Rebellion* (Bloomington: Indiana University Press, 2004), 71.

increased the offensive against the CPN(M).¹⁸⁷ In an attempt to control the rising CPN(M) insurgency, Gyanendra declared a state of emergency in November 2001 to fully activate the RNA, leading to fourteen months of indecisive violence.¹⁸⁸ After political upheaval in 2002 led to the dissolution of the parliament and canceling of provisional elections, Gyanendra seized full executive power and installed a new prime minister and cabinet. Each of the three successive attempts to reform the cabinet between 2002 and 2005 failed, resulting in Gyanendra seizing direct power as a monarch in 2006 and creating a triangular struggle for power between the king, the political parties and the CPN(M).¹⁸⁹

During the almost ten-year conflict in which an estimated 13,000 Nepalese were killed, both the Government of Nepal and the CPN(M) were cited for their rampant human rights abuses and tactics.¹⁹⁰ During the conflict, the United States did not mention the CPN(M) in the *Patterns of Global Terrorism* report until the 2001 report, which briefly mentioned them as revolutionary group using terrorist tactics, although those tactics are not defined.¹⁹¹ The CPN(M) actively threatened the U.S., India and China for interference in the “internal affairs” of Nepal.¹⁹² After the CPN(M) claimed responsibility for the 2002 murder of two off-duty local U.S. Embassy guards and bombing two Coca-Cola plants in which no one was injured. The State Department then listed the CPN(M) as a SDGT on October 31, 2003, for supporting terrorist activity and placed them on the TEL to prevent movement to the United States.¹⁹³ At the time, the SDGT and TEL designation was seen by Indian newspapers as a political ploy by the United

¹⁸⁷Paul K. Davis et al., *Understanding and Influencing Public Support for Insurgency and Terrorism* (Santa Monica, CA: RAND Corporation, 2012), 122n6.

¹⁸⁸John Whelpton, *A History of Nepal* (Cambridge: Cambridge University Press, 2005), 218.

¹⁸⁹Davis et al., 123.

¹⁹⁰Gross, 40.

¹⁹¹U.S. State Department, Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism 2001* (Washington, DC, 2002), 11.

¹⁹²Bruce Vaughn, “Nepal: Background and U.S. Relations.” No. RL31599. (Congressional Research Service Report for Congress, 2006), 14.

¹⁹³U.S. State Department, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2003* (Washington, DC, 2004), 143.

States to gain Nepal's support for the Global War on Terror in exchange for a coercive approach against the CPN(M).¹⁹⁴ During their listing, the CPN(M) continued violence and in 2006, the people held widespread protests against the monarchy's authoritarianism and after a 17-day standoff, Gyanendra endorsed peace negotiations between the political parties and the CPN(M). This agreement led to the 2006 Comprehensive Peace Accord (CPA), which allowed the CPN(M) to run for election in 2008, where they won the largest block of parliamentary seats.¹⁹⁵

Because of the CPN(M)'s simultaneous SDGT listing and the electoral results, the U.S Embassy was forbidden from directly consulting or interacting with leadership within the new parliament under the prohibitions of E.O. 13224, which did not exclude diplomats.¹⁹⁶ After some delay, an OFAC license was secured that enabled continued dialogue between the United States and the CPN(M) regarding the peace process and eventual delisting, which did not occur until 2012.¹⁹⁷ The delisting occurred after the State Department determined that the CPN(M) no longer conducted terrorist activity that posed a threat to U.S. citizens or national security.¹⁹⁸

There are several impacts of the United States' designation of the CPN(M) as a SDGT and TEL, most of which negatively affect the United States diplomatic efforts. In an interview with Joshua Gross, the legal advisor for the CPN(M) noted at the only tangible effect of the United States designating the CPN(M) as a SDGT and placing them on the TEL was difficulty in obtaining visas when members traveled outside of Nepal.¹⁹⁹ The SDGT designation had a considerable effect on U.S. diplomatic engagement in the CPA. In his critique of the U.S. policy regarding the CPN(M), Gross states that the terrorist tag isolated the United States from the peace process and allowed the vacuum to be filled by

¹⁹⁴Hutt, 197.

¹⁹⁵Gross, 40.

¹⁹⁶Ibid., 44-45.

¹⁹⁷Ibid., 45.

¹⁹⁸Bureau of Counterterrorism, *Country Reports 2012*, 165.

¹⁹⁹Gross, 46.

India and the United Nations.²⁰⁰ Gross interviewed several U.S. and UN diplomats who noted that terrorist lists are “blunt instruments” that prevented U.S. involvement in the early peace process, possibly prolonging violence.²⁰¹ This prevented U.S. engagement with the CPN(M) and may have created suspicion of the United States’ intentions during diplomatic interactions after the OFAC license was issued. In Gross’ interview with Dr. Duman Thapa of the Asian Studies Center for Peace and Conflict Transformation, Thapa noted that there was a lack of U.S. transparency frustrated the CPN(M)’s compliance with peace benchmarks. The U.S. policy was not flexible when the CPN(M) took steps to participate in the political process, lacking a reward for eschewing violence.²⁰² The impact of designation was negligible on the CPN(M), but may have prolonged violence and damaged the image of the United States through lack of transparency in designation criteria and flexibility to assist the peace process.

Given the characteristics of the CPN(M) case study, the outcome corresponds with the theory’s prediction. The theory predicts that the United States is inconsistent in designating terrorist organizations because of wide discretion in designation using a vague definition of terrorism. The discretion to apply a terrorism designation based on three attacks that did not directly affect the United States had a subsequently negative effect on diplomatic efforts in the peace process.

Gross makes three recommendations to create a more flexible, precise and transparent designation process that is responsive to diplomatic situations. He first recommends a clear path to legitimacy, which may compel armed groups to change paths by informing groups of the process for designations removal.²⁰³ His second recommendation is a type of probationary status that would incentivize behavior change and inclusion in a peace process that reduces violence.²⁰⁴ The third recommendation is to exempt peacebuilding efforts from prohibition by reforming the designation

²⁰⁰Gross, 46.

²⁰¹Ibid., 47.

²⁰²Ibid.

²⁰³Ibid., 53.

²⁰⁴Ibid.

process.²⁰⁵ Gross explains that OFAC should determine if peacebuilding efforts have a “tangible” value that prohibited under E.O. 13224, which would clarify the existing framework. The evidence from this case study supports the hypothesis that the United States must review its designation process and criteria for clarity and effectiveness.

The CPN(M) are a unique case study in the lack of impact that designation had on their organization combined with the significant impact on U.S. diplomatic interaction with their newly elected members. While they were obviously a violent group, they only directly opposed the United States’ involvement in internal Nepalese affairs. Designating them as a terrorist organization affected the United States’ ability to be part of the peace process by forbidding diplomatic involvement, instead forcing the use of coercive processes to have a marginal effect on the group. The evidence indicates that this circumstance could reoccur if there are not improvements in the designation criteria that clarify the process for listing and delisting and create an allowance for diplomatic involvement.

The case studies reveal the negative effects of excessive discretion in designation and a vague definition of terrorism on military and diplomatic affairs. Military operations are negatively affected by a lack of clarity in terrorism definition and designation criteria, which complicates rules of engagement and detention status based on their status(es). Political influence on terrorist designation complicates diplomatic efforts by frustrating involvement in peace processes that alleviate conflict and its associated loss of life. Both case studies support the hypothesis that the United States is inconsistent in designating terrorist organizations because of a wide discretion in applying designation labels using a vague definition of terrorism. The designation criteria focus on behaviors and not the purpose of the groups, enabled by a vague terrorism definition that does not discern between terrorism and other forms of political violence. The case studies support the need for review of the designation criteria to eliminate inconsistency in their application. The case studies also support the need for a consolidated definition of terrorism across all

²⁰⁵Gross, 54.

designations to address the purpose of terrorism and adequately distinguish it from other forms of violence. Utilizing the lessons from these case studies will help to reduce future negative impacts of the terrorism designation framework on military and diplomatic operations.

PATH TO A DEFINITION

The debate on the definition of terrorism does not have a foreseeable end. As Walter Laqueur notes, seeking a definition beyond identification of violent tactics used to achieve a political end is “bound to lead to endless controversies.”²⁰⁶ Governments, however, do not have the option to debate the definitions of terrorism or have ineffective frameworks without facing the consequences of their shortcomings. The U.S. Government must have an effective, efficacious designation framework to distinguish between terrorists and guerrillas. The designation framework must have complementary criteria and a sound, common definition of terrorism that reduces discretion and inconsistent application of terrorist designations. Complementary criteria provide a common understanding of the characteristics of a terrorist group. The two case studies demonstrate the consequences of an ineffective definition and imprecise designation. Rather than reducing options, a clear definition and effective framework increases options and makes designation more efficacious by creating a better understanding of the opposing actor. Reviewing the main points of the research should lead to conclusions about a way forward in effectively designating terrorist organizations.

The academic discussion provides some common elements to develop a sound definition of terrorism. A sound, common definition recognizes the violent nature of terrorism, defines noncombatants, and identifies the political and psychological purpose of the terrorist act, enabling a clear distinction between terrorist and other types of groups. A definition of noncombatants must protect civilians without encompassing all possible targets in an effort to aid in distinguishing the purpose of terrorism. Understanding the political and psychological purpose of a terrorist act distinguish it from common crime or guerrilla warfare, increasing the understanding of the violent act. These elements should provide the structure for improving the current statutory definition of terrorism.

²⁰⁶Walter Laqueur, *Terrorism* (London: Weidenfeld and Nicolson, 1977), 79.

The current statutory definition used to designate terrorist organizations suffers from two deficiencies in the elements of a sound definition. It does not provide adequate distinction of noncombatants or recognize the political or psychological purpose of terrorism. There is no statutory definition of noncombatants; an unofficial reference by the State Department gives an overbroad definition that encompasses everyone but fielded military forces. Not incorporating the political and psychological purpose of terrorism in the definition allows context to be imprecise and encompass nearly any act. An alternative definition that builds on the strengths of the DoS and DoD definitions and is visually modeled, clarifies the definition of terrorism to enable a more effective designation framework.

As reflected in the structure of the designation framework, the U.S. Government has created a system of designation that relies on vagueness and discretion to provide options. This system has multiple, uncoordinated features that places a substantially greater burden of proof on designating FTOs while providing little oversight of SDGT designation. The imbalance continues with the ability for FTOs to challenge their designation while SDGTs have no such recourse. The vagueness of the terrorism designation system allows political influences to wreak havoc on the consistency in both listing and delisting terrorist organizations. This inconsistency opens the system up to charges of hypocrisy and imbalance, further exacerbating the issue. The U.S. Government's imbalance in designation creates unpredictable second- and third-order effects that negatively affect military and diplomatic operations.

The case studies of the Mujahedin-e Khalq and Communist Party of Nepal (Maoist) illustrate the effect that lack of clarity and excessive discretion has on military and diplomatic efforts. They also demonstrate the complex nature of designating terrorist organizations, and the need for clear criteria and definitions to distinguish between types of groups. Most importantly, they validate the need for a comprehensive review of the terrorist organization designation system to avoid such difficult circumstances arising in the future.

There are several conclusions to make from the research in this monograph. The first is that defining terrorism and designating terrorist organizations are difficult and contentious undertakings that

governments must accomplish in order to effectively sanction terrorist organizations. Next, the United States must revise both the definition and the framework to ensure compatibility and complementary effects. The revision is required because the government, while attempting to preserve options, has developed a terrorism definition that is ineffective in distinguishing terrorism from other violent acts. This contributes to the DoS having wide discretion in designating terrorist organizations within the designation framework, which is compounded by multiple, incompatible definitions and wide latitude in designation criteria. The negative results of using an imprecise definition and expansive designation criteria is demonstrated in the two case studies, which are apt to be repeated if no definitional, procedural, or structural changes are made to the terrorist designation process.

The purpose of this monograph is not to invalidate or otherwise disparage the terrorist organization designation system. It does argue that the system is inefficient through its lack of clear, coordinated criteria and definitions, which creates difficult circumstances that need not exist. Currently, the power to restructure and coordinate the designation framework lies in both the Congressional and Presidential realms. The U.S. military does not have the power to restructure the designation framework or directly affect the designation of groups, but must understand the implications of group designations and account for them in planning operations.

This monograph also does not argue for a designation label to fit the circumstances of every violent group, nor a “one size fits” all approach. It does argue that for the designation framework to be efficacious and effective, it must provide scalable designation options that have compatible definitions and criteria. The U.S. must realize that there is no ultimate way to define terrorism or set evaluation criteria, but there are many ways to create wrong ones. There must be an understanding that to meet the requirement for a complementary set of definitions and criteria across a range of designation options, leaders must make decisions about the composition of the current system in the face of an ever-expanding field of study. The U.S. cannot afford to suffer “paralysis by analysis” any more than it can afford to have a system that produces undesired consequences.

APPENDIX A: LIST OF FTOs and SDGTs

Table 1. List of FTOs, SDGTs, and SDTs

Specially Designated Nationals and Blocked Persons List Search			
List of FTOs, SDGTs and SDTs			
As Of 17 March 2014			
Organizations listed as FTOs			
#	Name	Type	Program(s)
1	KATA'IB HIZBALLAH	Entity	FTO, IRAQ3, SDGT
2	ABDALLAH AZZAM BRIGADES	Entity	FTO, SDGT
3	ABU NIDAL ORGANIZATION	Entity	FTO, SDGT, SDT
4	ABU SAYYAF GROUP	Entity	FTO, SDGT
5	AL-AQSA MARTYRS BRIGADE	Entity	FTO, SDGT, SDT
6	AL-JIHAD	Entity	FTO, SDGT, SDT
7	AL-MULATHAMUN BATTALION	Entity	FTO, SDGT
8	AL-QA'IDA IN THE ARABIAN PENINSULA	Entity	FTO, SDGT
9	AL-SHABAAB	Entity	FTO, SDGT, SOMALIA
10	ANSAR AL-DINE	Entity	FTO, SDGT
11	ANSAR AL-ISLAM	Entity	FTO, SDGT
12	ANSAR AL-SHARI'A IN BENGHAZI	Entity	FTO, SDGT
13	ANSAR AL-SHARI'A IN DARNAH	Entity	FTO, SDGT
14	ANSAR AL-SHARI'A IN TUNISIA	Entity	FTO, SDGT
15	ANSARU	Entity	FTO, SDGT
16	ARMY OF ISLAM	Entity	FTO, SDGT
17	ASBAT AL-ANSAR	Entity	FTO, SDGT
18	AUM SHINRIKYO	Entity	FTO, SDGT
19	BOKO HARAM	Entity	FTO, SDGT
20	CONTINUITY IRA	Entity	FTO, SDGT
21	EUZKADI TA ASKATASUNA	Entity	FTO, SDGT
22	GAMA'A AL-ISLAMIYYA	Entity	FTO, SDGT, SDT
23	HAMAS	Entity	FTO, SDGT, SDT
24	HAQQANI NETWORK	Entity	FTO, SDGT
25	HARAKAT UL-JIHAD-I-ISLAMI/BANGLADESH	Entity	FTO, SDGT
26	HARAKAT UL-MUJAHIDEEN	Entity	FTO, SDGT
27	HIZBALLAH	Entity	FTO, SDGT, SDT, SYRIA
28	INDIAN MUJAHIDEEN	Entity	FTO, SDGT
29	ISLAMIC ARMY	Entity	FTO, SDGT, SDT
30	ISLAMIC JIHAD GROUP	Entity	FTO, SDGT
31	ISLAMIC MOVEMENT OF UZBEKISTAN	Entity	FTO, SDGT

#	Name	Type	Program(s)
32	JAISH-I-MOHAMMED	Entity	FTO, SDGT
33	JAM'AT AL TAWHID WA'AL-JIHAD	Entity	FTO, SDGT
34	JEMAA ISLAMIYAH	Entity	FTO, SDGT
35	JEMMAH ANSHORUT TAUHID	Entity	FTO, SDGT
36	JUNDALLAH	Entity	FTO, SDGT
37	KAHANE CHAI	Entity	FTO, SDGT, SDT
38	KURDISTAN WORKERS' PARTY	Entity	FTO, SDGT, SDNTK
39	LASHKAR E-TAYYIBA	Entity	FTO, SDGT
40	LASHKAR I JHANGVI	Entity	FTO, SDGT
41	LIBERATION TIGERS OF TAMIL EELAM	Entity	FTO, SDGT
42	LIBYAN ISLAMIC FIGHTING GROUP	Entity	FTO, SDGT
43	NATIONAL LIBERATION ARMY	Entity	FTO, SDGT
44	NEW PEOPLE'S ARMY / COMMUNIST PARTY OF THE PHILIPPINES	Entity	FTO, SDGT
45	PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION	Entity	FTO, SDGT, SDT
46	PALESTINE LIBERATION FRONT - ABU ABBAS FACTION	Entity	FTO, SDGT, SDT
47	POPULAR FRONT FOR THE LIBERATION OF PALESTINE	Entity	FTO, SDGT, SDT
48	POPULAR FRONT FOR THE LIBERATION OF PALESTINE - GENERAL COMMAND	Entity	FTO, SDGT, SDT
49	REAL IRA	Entity	FTO, SDGT
50	REVOLUTIONARY ARMED FORCES OF COLOMBIA	Entity	FTO, SDGT, SDNTK
51	REVOLUTIONARY ORGANIZATION 17 NOVEMBER	Entity	FTO, SDGT
52	REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT	Entity	FTO, SDGT
53	REVOLUTIONARY STRUGGLE	Entity	FTO, SDGT
54	SALAFIST GROUP FOR CALL AND COMBAT	Entity	FTO, SDGT
55	SHINING PATH	Entity	FTO, SDGT
56	TEHRIK-E TALIBAN PAKISTAN (TTP)	Entity	FTO, SDGT
57	UNITED SELF-DEFENSE FORCES OF COLOMBIA	Entity	FTO, SDGT, SDNTK

Organizations not listed as FTOs but listed as SDTs or SDGTs			
#	Name	Type	Program(s)
1	IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY	Entity	HRIT-IR, IFSR, IRAN-HR, SDGT, SYRIA
2	AFGHAN SUPPORT COMMITTEE	Entity	SDGT
3	AFRI BELG COMMERCIO E INDUSTRIA LDA	Entity	SDGT
4	AL BARAKA EXCHANGE LLC	Entity	SDGT
5	AL FURQAN	Entity	SDGT
6	AL MANAR TV	Entity	SDGT
7	AL NOUR RADIO	Entity	SDGT
8	AL RASHID TRUST	Entity	SDGT
9	AL REHMAT TRUST	Entity	SDGT
10	AL-AKHTAR TRUST INTERNATIONAL	Entity	SDGT
11	AL-AQSA	Entity	SDGT
12	AL-AQSA E.V.	Entity	SDGT
13	AL-AQSA FOUNDATION	Entity	SDGT
14	AL-AQSA FOUNDATION	Entity	SDGT
15	AL-AQSA FOUNDATION	Entity	SDGT
16	AL-AQSA FOUNDATION	Entity	SDGT
17	AL-AQSA ISLAMIC BANK	Entity	SDGT, SDT
18	AL-AQSA TV	Entity	SDGT
19	AL-BAKOUN ALA AL-AHD ORGANIZATION	Entity	SDGT
20	AL-BARAKAAT	Entity	SDGT
21	AL-BARAKAAT BANK	Entity	SDGT
22	AL-BARAKAAT BANK OF SOMALIA	Entity	SDGT
23	AL-BARAKAAT GROUP OF COMPANIES SOMALIA LIMITED	Entity	SDGT
24	AL-BARAKAT FINANCE GROUP	Entity	SDGT
25	AL-BARAKAT FINANCIAL HOLDING COMPANY	Entity	SDGT
26	AL-BARAKAT GLOBAL TELECOMMUNICATIONS	Entity	SDGT
27	AL-BARAKAT INTERNATIONAL	Entity	SDGT
28	AL-BARAKAT INVESTMENTS	Entity	SDGT
29	AL-HAMATI SWEETS BAKERIES	Entity	SDGT
30	AL-HARAMAIN & AL MASJED AL-AQSA CHARITY FOUNDATION : BOSNIA BRANCH	Entity	SDGT
31	AL-HARAMAIN : AFGHANISTAN BRANCH	Entity	SDGT
32	AL-HARAMAIN : ALBANIA BRANCH	Entity	SDGT
33	AL-HARAMAIN : BANGLADESH BRANCH	Entity	SDGT
34	AL-HARAMAIN : ETHIOPIA BRANCH	Entity	SDGT
35	AL-HARAMAIN : INDONESIA BRANCH	Entity	SDGT
36	AL-HARAMAIN : KENYA BRANCH	Entity	SDGT
37	AL-HARAMAIN : PAKISTAN BRANCH	Entity	SDGT

#	Name	Type	Program(s)
38	AL-HARAMAIN : TANZANIA BRANCH	Entity	SDGT
39	AL-HARAMAIN : THE NETHERLANDS BRANCH	Entity	SDGT
40	AL-HARAMAIN : UNITED STATES BRANCH	Entity	SDGT
41	AL-HARAMAIN FOUNDATION : COMOROS ISLANDS	Entity	SDGT
42	AL-HARAMAIN ISLAMIC FOUNDATION	Entity	SDGT
43	AL-HARAMAIN ISLAMIC FOUNDATION	Entity	SDGT
44	AL-ITIHAAD AL-ISLAMIYA	Entity	SDGT
45	AL-QA'IDA KURDISH BATTALIONS	Entity	SDGT
46	AL-QARD AL-HASSAN ASSOCIATION	Entity	SDGT
47	AL-QUDS INTERNATIONAL FOUNDATION	Entity	SDGT
48	AL-SALAH SOCIETY	Entity	SDGT
49	AQSSA SOCIETY YEMEN	Entity	SDGT
50	ARMED ISLAMIC GROUP	Entity	SDGT
51	ASAT TRUST REG.	Entity	SDGT
52	ASKATASUNA	Entity	SDGT
53	ASSOCIATION DE SECOURS PALESTINIENS	Entity	SDGT
54	AVIA TRUST FZE	Entity	SDGT
55	BA TAQWA FOR COMMERCE AND REAL ESTATE COMPANY LIMITED	Entity	SDGT
56	BABBAR KHALSA INTERNATIONAL	Entity	SDGT
57	BANK AL TAQWA LIMITED	Entity	SDGT
58	BANK SADERAT IRAN	Entity	IFSR, IRAN, SDGT
59	BANK SADERAT PLC	Entity	IFSR, IRAN, SDGT
60	BARAKA TRADING COMPANY	Entity	SDGT
61	BARAKAAT GROUP OF COMPANIES	Entity	SDGT
62	BARAKAAT INTERNATIONAL COMPANIES	Entity	SDGT
63	BARAKAAT NORTH AMERICA, INC.	Entity	SDGT
64	BARAKAAT RED SEA TELECOMMUNICATIONS	Entity	SDGT
65	BARAKAAT TELECOMMUNICATIONS COMPANY LIMITED	Entity	SDGT
66	BARAKAAT TELECOMMUNICATIONS COMPANY SOMALIA, LIMITED	Entity	SDGT
67	BARAKAT BANK AND REMITTANCES	Entity	SDGT
68	BARAKAT COMPUTER CONSULTING	Entity	SDGT
69	BARAKAT CONSULTING GROUP	Entity	SDGT
70	BARAKAT GLOBAL TELEPHONE COMPANY	Entity	SDGT
71	BARAKAT IMPORT EXPORT LTDA	Entity	SDGT
72	BARAKAT POST EXPRESS	Entity	SDGT
73	BARAKAT REFRESHMENT COMPANY	Entity	SDGT
74	BARAKO TRADING COMPANY LLC	Entity	SDGT
75	BAYT AL-MAL	Entity	SDGT

#	Name	Type	Program(s)
76	BEHINEH TRADING	Entity	IFSR, SDGT
77	BEHNAM SHAHRIYARI TRADING COMPANY	Entity	IFSR, SDGT
78	BEIT EL-MAL HOLDINGS	Entity	SDGT, SDT
79	BENEVOLENCE INTERNATIONAL FOUNDATION	Entity	SDGT
80	BENEVOLENCE INTERNATIONAL FUND	Entity	SDGT
81	BIBLOS TRAVEL AGENCY	Entity	SDGT
82	BLUE SKY AVIATION CO FZE	Entity	SDGT
83	BOSANSKA IDEALNA FUTURA	Entity	SDGT
84	CASA APOLLO	Entity	SDGT
85	CASA HAMZE	Entity	SDGT
86	CAUCASUS EMIRATE	Entity	SDGT
87	COMITE' DE BIENFAISANCE ET DE SECOURS AUX PALESTINIENS	Entity	SDGT
88	COMMANDER NAZIR GROUP	Entity	SDGT
89	CONGO FUTUR	Entity	SDGT
90	CONSPIRACY OF FIRE NUCLEI	Entity	SDGT
91	DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE - HAWATMEH FACTION	Entity	SDT
92	DHAMAT HOUMET DAAWA SALAFIA	Entity	SDGT
93	EASTERN TURKISTAN ISLAMIC MOVEMENT	Entity	SDGT
94	ELEHSSAN	Entity	SDGT
95	FATAH AL-ISLAM	Entity	SDGT
96	FIRST OF OCTOBER ANTIFASCIST RESISTANCE GROUP	Entity	SDGT
97	FORENINGEN AL-AQSA	Entity	SDGT
98	FREE LIFE PARTY OF KURDISTAN	Entity	SDGT
99	GALERIA PAGE	Entity	SDGT
100	GLOBAL RELIEF FOUNDATION, INC.	Entity	SDGT
101	GLOBAL RELIEF FOUNDATION, INC.	Entity	SDGT
102	GOLFRATE HOLDINGS (ANGOLA) LDA	Entity	SDGT
103	GOODWILL CHARITABLE ORGANIZATION, INC.	Entity	SDGT
104	GRUPO AROSFRAN EMPREENDIMENTOS E PARTICIPACOES SARL	Entity	SDGT
105	HAJI KHAIRULLAH HAJI SATTAR MONEY EXCHANGE	Entity	SDGT
106	HARAKAT-UL JIHAD ISLAMI	Entity	SDGT
107	HEYATUL ULYA	Entity	SDGT
108	HILAL TRAVEL AGENCY	Entity	SDGT
109	HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT	Entity	SDGT, SDT
110	IMAM KHOMEINI RELIEF COMMITTEE (LEBANON BRANCH)	Entity	IFSR, SDGT

#	Name	Type	Program(s)
111	INTERNATIONAL ISLAMIC RELIEF ORGANIZATION INDONESIA BRANCH OFFICE	Entity	SDGT
112	INTERNATIONAL ISLAMIC RELIEF ORGANIZATION PHILIPPINES BRANCH OFFICE	Entity	SDGT
113	INTERNATIONAL SIKH YOUTH FEDERATION	Entity	SDGT
114	INTERPAL	Entity	SDGT
115	IRANIAN COMMITTEE FOR THE RECONSTRUCTION OF LEBANON	Entity	IFSR, SDGT
116	ISLAMIC AFRICAN RELIEF AGENCY	Entity	SDGT
117	ISLAMIC ARMY OF ADEN	Entity	SDGT
118	ISLAMIC NATIONAL BANK OF GAZA	Entity	SDGT
119	ISLAMIC RESISTANCE SUPPORT ORGANIZATION	Entity	SDGT
120	ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE	Entity	IFSR, IRGC, SDGT, SYRIA
121	JAMIA TALEEM-UL-QURAN-WAL-HADITH MADRASSA	Entity	SDGT
122	JAM'YAH TA'AWUN AL-ISLAMIA	Entity	SDGT
123	JIHAD AL-BINA	Entity	SDGT
124	KAIRABA SUPERMARKET	Entity	SDGT
125	KYRGYZ TRANS AVIA	Entity	IFSR, SDGT
126	LAJNAT AL DAAWA AL ISLAMIYYA	Entity	SDGT
127	LEBANESE MEDIA GROUP	Entity	SDGT
128	LINER TRANSPORT KISH	Entity	IFSR, SDGT
129	LOYALIST VOLUNTEER FORCE	Entity	SDGT
130	MAHAN AIR	Entity	IFSR, SDGT
131	MAKHTAB AL-KHIDAMAT/AL KIFAH	Entity	SDGT
132	MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY	Entity	SDGT
133	MARTYRS FOUNDATION	Entity	IFSR, SDGT
134	MARTYRS FOUNDATION IN LEBANON	Entity	SDGT
135	MEADOWBROOK INVESTMENTS LIMITED	Entity	SDGT
136	MOROCCAN ISLAMIC COMBATANT GROUP	Entity	SDGT
137	MOVEMENT FOR ISLAMIC REFORM IN ARABIA	Entity	SDGT
138	MOVEMENT FOR UNITY AND JIHAD IN WEST AFRICA	Entity	SDGT
139	MUHAMMAD JAMAL NETWORK	Entity	SDGT
140	NADA INTERNATIONAL ANSTALT	Entity	SDGT
141	NADA MANAGEMENT ORGANIZATION SA	Entity	SDGT
142	ORANGE VOLUNTEERS	Entity	SDGT
143	OVLAS TRADING S.A.	Entity	SDGT
144	OZLAM PROPERTIES LIMITED	Entity	SDGT
145	PALESTINIAN ASSOCIATION IN AUSTRIA	Entity	SDGT
146	PALESTINIAN MARTYRS FOUNDATION	Entity	SDGT
147	RABITA TRUST	Entity	SDGT

#	Name	Type	Program(s)
148	RAHAT LTD	Entity	SDGT
149	RAJAH SOLAIMAN MOVEMENT (RSM)	Entity	SDGT
150	RED HAND DEFENDERS	Entity	SDGT
151	RED SEA BARAKAT COMPANY LIMITED	Entity	SDGT
152	REVIVAL OF ISLAMIC HERITAGE SOCIETY	Entity	SDGT
153	REVIVAL OF ISLAMIC HERITAGE SOCIETY	Entity	SDGT
154	REVOLUTIONARY PEOPLE'S STRUGGLE	Entity	SDGT
155	ROSHAN MONEY EXCHANGE	Entity	SDGT
156	SANABEL RELIEF AGENCY LIMITED	Entity	SDGT
157	SANABIL ASSOCIATION FOR RELIEF AND DEVELOPMENT	Entity	SDGT
158	SARA PROPERTIES LIMITED	Entity	SDGT
159	SECT OF REVOLUTIONARIES	Entity	SDGT
160	SIRJANCO TRADING L.L.C.	Entity	IFSR, SDGT
161	SNIPER AFRICA	Entity	SDGT
162	SOMALI INTERNET COMPANY	Entity	SDGT
163	STICHTING AL-AQSA	Entity	SDGT
164	STICHTING BENEVOLENCE INTERNATIONAL NEDERLAND	Entity	SDGT
165	SYRIAN ARAB AIRLINES	Entity	IFSR, IRGC, SDGT, SYRIA
166	TAIBAH INTERNATIONAL : BOSNIA BRANCH	Entity	SDGT
167	TAJCO	Entity	SDGT
168	TALIBAN	Entity	SDGT
169	TAMIL FOUNDATION	Entity	SDGT
170	TAMILS REHABILITATION ORGANISATION	Entity	SDGT
171	TEYREBAZEN AZADIYA KURDISTAN	Entity	SDGT
172	THE AID ORGANIZATION OF THE ULEMA	Entity	SDGT
173	THE ISLAMIC INTERNATIONAL BRIGADE	Entity	SDGT
174	THE RIYADUS-SALIKHIN RECONNAISSANCE AND SABOTAGE BATTALION OF CHECHEN MARTYRS	Entity	SDGT
175	THE SPECIAL PURPOSE ISLAMIC REGIMENT	Entity	SDGT
176	TUNISIAN COMBAT GROUP	Entity	SDGT
177	UKRAINIAN-MEDITERRANEAN AIRLINES	Entity	IFSR, SDGT
178	ULSTER DEFENCE ASSOCIATION	Entity	SDGT
179	UMMAH TAMEER E-NAU	Entity	SDGT
180	UNION OF GOOD	Entity	SDGT
181	WAAD PROJECT	Entity	SDGT
182	WAFI HUMANITARIAN ORGANIZATION	Entity	SDGT
183	WALDENBERG, AG	Entity	SDGT
184	WAQFIYA RI'AYA AL-USRA AL-FILISTINYA WA AL-LUBNANYA	Entity	SDGT

#	Name	Type	Program(s)
185	YAS AIR	Entity	IFSR, IRGC, SDGT
186	YOUSSEF M. NADA	Entity	SDGT
187	YOUSSEF M. NADA & CO. GESELLSCHAFT M.B.H.	Entity	SDGT
188	YOUSSEF COMPANY FOR FINANCE AND INVESTMENT	Entity	SDGT

Source: Data adapted from Office of Foreign Asset Control, “SDN Search,” <http://sdnsearch.ofac.treas.gov/default.aspx> (accessed 17 March 2014).

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